

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BECKLEY

## TRANSCRIPT OF PROCEEDINGS

x

DAVID M. DAUGHERTY, : CIVIL ACTION  
Plaintiff, : NO. 5:14-CV-24506  
vs. :  
OCWEN LOAN SERVICING, LLC, : May 19, 2016  
Defendant. :  
.

TRIAL  
VOLUME IV

BEFORE THE HONORABLE IRENE C. BERGER  
UNITED STATES DISTRICT JUDGE

## APPEARANCES:

For the Plaintiff: MR. RALPH C. YOUNG  
MR. JED ROBERT NOLAN  
MR. STEVEN R. BROADWATER  
Hamilton Burgess Young &  
Pollard  
P.O. Box 959  
Fayetteville, WV 25840-0959

1 APPEARANCES (Continued):

2

3

4 For the Defendant:

MR. JASON E. MANNING  
MR. JONATHAN M. KENNEY  
Troutman Sanders  
Suite 2000  
22 Central Park Avenue  
Virginia Beach, VA 23462

7

8

9

MS. SARA L. MARKERT  
1661 WASHINGTON ROAD  
Suite 100  
West Palm Beach, FL 33409

10

11

12

13

14

15

16

17

18

19

20

21

22 Court Reporter:

Lisa A. Cook, RPR-RMR-CRR-FCRR

23

24

Proceedings recorded by mechanical stenography; transcript  
produced by computer.

25

1                           I N D E X

2                           PLAINTIFF'S WITNESSES:                           PAGE

3                           **SANDRA LYEW**

4                           Cross Examination (By Mr. Manning) . . . . . 4

5                           Redirect Examination (By Mr. Young) . . . . . 68

6

7                           **TINA DAUGHERTY**

8                           Direct Examination (By Mr. Young) . . . . . 114

9                           Cross Examination (By Mr. Kenney) . . . . . 120

10

11                           DEFENDANT'S WITNESS:                           PAGE

12                           **JOHN U LZHEIMER**

13                           Direct Examination (By Mr. Manning) . . . . . 145

14

15

16

17

18

19

20

21

22

23

24

25

Sandra Lyew - Cross (Manning)

P R O C E E D I N G S

2 THE COURT: Good morning, everyone.

3 Mr. Manning, cross.

4 MR. MANNING: Thank you, Judge.

5 CROSS EXAMINATION

6 BY MR. MANNING:

7 Q. Good morning, Ms. Lyew. How are you?

8 A. Good morning. I'm doing good.

9 Q. Yesterday a number of times during Mr. Young's  
10 questions you mentioned the word "workflow" regarding the  
11 dispute resolution process. Do you recall that?

12 A. Yes.

13 Q. That's where I'd like to start. When you were  
14 referring to workflow regarding a dispute resolution, what  
15 department handles that workflow?

16 A. The credit reporting department.

17 Q. The individuals that were listed in various capacities  
18 on Plaintiff's Exhibit 26, that comment log, do you recall a  
19 number of different names and entries on that log?

20 A. Yes.

21 Q. So those individuals -- are those individuals part of  
22 the credit department or are they a part of other  
23 departments?

24 A. They were part of the credit reporting department.

25 Q. The individuals in the credit reporting department that

Sandra Lyew - Cross (Manning)

1 were referenced and the department as a whole - that's where  
2 I want to start - what training do those individuals  
3 receive?

4 A. If we can go -- because he -- there was the ombudsman.  
5 Each department has, has access to the system. So mostly  
6 regarding the ACDVs, that is the credit reporting  
7 department. Then you have the ombudsman's department that  
8 handled the CFPB, and then the research department as well.

9 Q. Okay. Let me make sure I got all this. Credit  
10 department, research department, CFPB, ombudsman?

11 A. Ombudsman's department.

12 Q. So there's three different departments?

13 A. Credit reporting, ombudsman, research. Those are the  
14 three areas that he went into.

15 Q. Okay. So let's, let's start with the first one.  
16 Credit, research, CFPB, ombudsman, I know you talked about  
17 all three of those yesterday in various capacities. Let's  
18 just start with credit. What training do the credit  
19 department individuals receive?

20 A. They -- the new credit analysts and associates, they  
21 receive one month of training. It's two weeks of classroom  
22 as well as two weeks of shadowing existing Ocwen employees  
23 based on their duties side-by-side.

24 Q. Okay. Let's break that down. You mentioned one month  
25 of classroom. What does that involve?

Sandra Lyew - Cross (Manning)

1 A. That consists of training materials, learning the  
2 function, system training, and as well as on-hands training  
3 in that, in that training room.

4 Q. What about shadowing?

5 MR. YOUNG: Objection.

6 THE COURT: Yes, sir.

7 MR. YOUNG: Your Honor, this exceeds the scope of  
8 direct examination. I never examined this witness about  
9 training of employees. Moreover, the policies and --  
10 training policies and procedures were never produced as  
11 requested.

12 THE COURT: Response, Mr. Manning?

13 MR. MANNING: There was lengthy testimony by this  
14 witness about workflow, individuals who handle it, how they  
15 handle it, the departments as a whole. And I'm within the  
16 scope of those subjects.

17 THE COURT: The issue of workflow I think is  
18 appropriate. The issue as it relates to training, however,  
19 I think is outside of the witness's testimony yesterday.  
20 But I do believe that you're within your right to get into  
21 the issue of workflow. Training is a separate issue,  
22 although I recognize relating, Mr. Manning.

23 So with that tortured response by the Court, I sustain  
24 the objection as it relates to the training, policies and  
25 procedures type issue, but overrule it as it relates to the

Sandra Lyew - Cross (Manning)

1 workflow, Mr. Manning.

2 BY MR. MANNING:

3 Q. You described workflow as the process of the dispute  
4 resolution system; right?

5 A. Yes.

6 Q. Okay. So let's start at the beginning. Describe for  
7 the jury, if you could, how the workflow process works by  
8 the individuals in the credit department at Ocwen Loan  
9 Servicing.

10 THE COURT: Let me interrupt you for a moment.

11 You all come to the bench, Mr. Young, Mr. Manning.

12 (Bench conference on the record)

13 THE COURT: Mr. Manning, I don't want to cut you  
14 off prematurely. I did not know whether you intend to  
15 direct this witness as well.

16 MR. MANNING: Well, Your Honor, up until --

17 THE COURT: That would certainly affect the basis  
18 of my ruling.

19 MR. MANNING: Up until Your Honor instructed us to  
20 have her present, we had intended to call her later.

21 THE COURT: Uh-huh.

22 MR. MANNING: Mr. Young represented that it wasn't  
23 going to be necessary for us to call her if she was allowed  
24 to be here in person. So that's why I was surprised by the  
25 scope objection. But I understand he's now entitled to make

Sandra Lyew - Cross (Manning)

1 that.

2 My thought is it's going to -- I mean, we're behind  
3 schedule, I mean, in terms of the timing of the trial. And  
4 my hope is that if I can get her testimony done today, then  
5 she doesn't have to be recalled.

6 THE COURT: Well, that's my question, whether you  
7 intend to call her as your witness. If you're doing that,  
8 I'll let you do that now and you would not be limited simply  
9 to Mr. Young's cross. He would then be able to cross on any  
10 new matters that you raise.

11 So, again, with respect to this issue of training and  
12 policy, he has an objection that it was never disclosed. So  
13 at least the basis of my ruling would be different if you're  
14 intending to also direct this witness at this time.

15 MR. MANNING: I see. I, I would like for  
16 efficiency sake to direct the witness at this time so I  
17 don't have to recall her later.

18 THE COURT: All right. Any objection to that, Mr.  
19 Young?

20 MR. YOUNG: No, Your Honor. I would just ask that  
21 you explain to the jury that she's also being called and  
22 that's why she's going to be permitted to speak beyond so  
23 we're --

24 THE COURT: Matters covered on your direct.

25 MR. YOUNG: Right.

Sandra Lyew - Cross (Manning)

1                   THE COURT: Do you have any continuing objection  
2 with respect to the training issue?

3                   MR. YOUNG: I do, Your Honor. We requested and  
4 were never provided any training policies or procedures.

5                   THE COURT: All right. Mr. Manning.

6                   MR. MANNING: Ms. Lyew was deposed on that subject  
7 for eight hours and she testified at length about Ocwen's  
8 training policies and procedures. And there's no  
9 requirement that such documents need to be written. You can  
10 have a procedure or a policy that's not written.

11                  THE COURT: Okay. I don't need a lecture. If she  
12 went into it on deposition, Mr. Young, I will let her go  
13 into it here today within the parameters of deposition  
14 testimony on the same issue because I think you have notice  
15 of it. Any training issues outside of the deposition, if  
16 you made a request for policies and didn't receive it, I  
17 would not permit. That gives you gentlemen some guidance.

18                  MR. YOUNG: Your Honor, I'd like an opportunity --

19                  MR. MANNING: It does.

20                  MR. YOUNG: -- to briefly review Ms. Lyew's  
21 deposition. I don't recall hours and hours of --

22                  THE COURT: All right.

23                  MR. YOUNG: -- testimony about policies and  
24 procedures at all.

25                  MR. MANNING: Mr., Mr. Young wasn't there. His

Sandra Lyew - Cross (Manning)

10

1 associate, Mr. Nolan, took it.

2 THE COURT: Well, we'll let him review it and then  
3 we'll know where we're going to go, gentlemen. Let's take a  
4 few minutes and see if you could discuss the matter with  
5 Mr. Nolan. Again, I would limit it to what's in the  
6 deposition testimony because I think you're on notice of  
7 that.

8 MR. MANNING: Uh-huh.

9 THE COURT: Anything outside of that with respect  
10 to training, if you made a request for policies and  
11 procedures and you weren't provided, I will exclude.

12 MR. YOUNG: I read the deposition, Your Honor.  
13 No, I was not there, but I'll quickly review it now and  
14 focus on whatever we covered in training. I appreciate the  
15 opportunity.

16 THE COURT: All right. Go ahead and do that.

17 Mr. Manning, are you in a position while he does that  
18 to proceed with her in another area so we don't lose time  
19 this morning?

20 MR. MANNING: Yes. I can continue right where I  
21 left off and then loop back.

22 THE COURT: Okay. Thank you, gentlemen.

23 (Bench conference concluded)

24 BY MR. MANNING:

25 Q. Ms. Lyew, I don't recall exactly my last question so

Sandra Lyew - Cross (Manning)

11

1 I'm going to propose to you that we just start at the  
2 beginning of the workflow process. How does that process,  
3 the dispute resolution start?

4 A. Each associate gets assigned from the supervisor a  
5 certain amount of disputes that may come in. The workflow,  
6 as I mentioned yesterday, once it's assigned, the research  
7 has to be conducted first.

8 Once the research is conducted, then the response is  
9 sent through the e-OSCAR to the CRA. From the -- once that  
10 is completed, then they enter the codes into the  
11 REALServicing system which is two separate systems to what  
12 was received, what was done so that it is notated in Ocwen's  
13 loan servicing system.

14 Q. You said the two systems are separate?

15 A. Yes.

16 Q. What systems are you referring to?

17 A. The e-OSCAR is a separate, separate system from the  
18 REALServicing system.

19 Q. Let's break them down.

20 A. Okay.

21 Q. What is the e-OSCAR system?

22 A. E-OSCAR is the communication that's being done between  
23 the furnishers and the credit reporting agencies.

24 Q. What is the REALServicing system?

25 A. That is Ocwen's main, main frame system that is

Sandra Lyew - Cross (Manning)

12

1 conducted on a daily basis.

2 Q. What information is contained within the REALServicing  
3 system about borrowers' loans?

4 A. Everything, everything pertaining to payments being  
5 received, correspondence, taxes and insurance, any,  
6 anything, any correspondence being sent out to the borrower,  
7 any correspondence being received. It is Ocwen's employees'  
8 daily function.

9 Q. Is the REALServicing system an Ocwen-owned system?

10 A. To my knowledge, yes.

11 Q. Is the e-OSCAR system an Ocwen-owned system?

12 A. No, it's not.

13 Q. You mentioned disputes as part of the workflow. You  
14 specifically talked about ACDVs. During your testimony  
15 yesterday you said there were two ways disputes could be  
16 received. What are those two ways?

17 A. A direct correspondence dispute that is sent directly  
18 to Ocwen. And the second one is through, through the credit  
19 reporting agencies.

20 Q. So let's take them one at a time. The disputes that  
21 are received straight from the, the borrower/customer, how  
22 are those received?

23 A. They can be received by fax, by mail. Then once they  
24 are received, they go into the research department that --  
25 they determine whether it's an escalated matter or it's

Sandra Lyew - Cross (Manning)

13

1 something that they can handle, as well as -- or in this  
2 case, it would go to the credit reporting department for  
3 additional information if they're not able to answer it.

4 Q. How is that direct dispute process different, if at  
5 all, from the indirect dispute process when it comes in from  
6 the e-OSCAR system?

7 A. The, the, the disputes that come through e-OSCAR is  
8 directly to the credit reporting department.

9 Q. Okay. So if I understand correctly, the direct  
10 disputes, meaning the borrower sends in a letter or calls or  
11 does a fax, that's direct to Ocwen. What department  
12 receives that?

13 A. The research department receives it first. And then,  
14 and then they conduct whatever research, research that  
15 they're able to do. If they're not able to respond or  
16 handle that, then it gets sent to the credit reporting  
17 department for further information that they would need.

18 Q. Once it is referred to the credit reporting department,  
19 what does the credit reporting department do with it?

20 A. The credit department would review the REALServicing  
21 system. And from that they, they conduct whatever research  
22 depending on what the correspondence is about. And then it  
23 gets sent back to the research department to respond to the  
24 written correspondence that was received.

25 Q. Other than the REALServicing system, are there any

Sandra Lyew - Cross (Manning)

14

1 other systems that the research or credit department have  
2 available to them to respond to those disputes?

3 A. Yes. They have available what we call now -- it was  
4 once called CIS, but it's called the Vault now. And that is  
5 the image document repository.

6 Q. When you say image document repository, what does that  
7 mean?

8 A. The -- any documentation that is -- it's an imaging  
9 system.

10 Q. What documents would be available on the imaging  
11 system?

12 A. For example, the note, the mortgage, any additional  
13 correspondence, the origination of the file, any, pretty  
14 much anything, copies of insurance policies, tax, tax  
15 information, Ocwen correspondence that was sent out. If a  
16 borrower applied for a loan modification, the financials  
17 would be in there as well.

18 Q. Once that research is completed by the research  
19 department or the credit department, what happens next?

20 A. The -- it -- again, the research department responds  
21 and sends a letter out to the borrower and notates the  
22 system and copy/pastes the letter, the response that was  
23 sent to the borrower into the system.

24 Q. When you say the credit analyst or research department  
25 notates the system, what system are you referring to?

Sandra Lyew - Cross (Manning)

15

1 A. To the REALServicing system.

2 Q. And specifically within the REALServicing system, what  
3 is being notated?

4 A. Basically once the, that the research has been  
5 completed and a letter, a copy of the letter that was, that  
6 was sent to the borrower, the letter would be completed  
7 before it's actually entered into the system showing  
8 complete.

9 Q. Is that the comment log that you were asked about a  
10 number of times yesterday with the time stamps?

11 A. Yes, yes, that's part of the REALServicing system.

12 Q. I see. So the time stamps are reflective of when the  
13 analyst or research person actually types in that entry?

14 A. Yes. When a code is entered into the system, the time,  
15 the time an Ocwen employee enters a code into the system, as  
16 well as the time when a, a date and time a borrower calls  
17 in, a date and time if Ocwen calls out, anything being  
18 received -- everything has a time, a date and time stamp on  
19 it.

20 Q. You mentioned that the e-OSCAR and REALServicing  
21 systems are separate. Is the e-OSCAR system somehow linked  
22 to that? As soon as that document is received it makes an  
23 entry into the comment log in REALServicing?

24 A. No, it does not. The -- each department has their, has  
25 codes that -- and the codes have templates. Templates are

Sandra Lyew - Cross (Manning)

16

1 made based on those codes. So when, when you put the code  
2 in, all you have to do is complete the template.

3 Q. Okay. So that's the overview of the direct dispute  
4 workflow process; right?

5 A. That's correct. And then they move on to the next one.

6 Q. Okay. So we've talked about direct. Now let's talk  
7 about the indirect. That's the disputes that come in  
8 through e-OSCAR; right?

9 A. Okay, yes.

10 Q. Okay. So please tell us again, step one, what  
11 initiates the workflow process.

12 A. The supervisor goes into a main, the main cue in  
13 e-OSCAR and then they assign to the associates the disputes.  
14 It doesn't matter how many dispute codes that may be say to  
15 one loan or everything is based on what is received from  
16 that main cue. It gets assigned.

17 And then once, once it's assigned to an associate, they  
18 research. And then once the research is completed, they  
19 send through e-OSCAR the response. Once they've done,  
20 completed that, then they go ahead and enter it into the  
21 system.

22 Q. So I have five steps. First through the indirect  
23 process, the e-OSCAR system provides the ACDV. That's  
24 receipt. That's step one?

25 A. Yes.

Sandra Lyew - Cross (Manning)

17

1 Q. Step two you said was assigned?

2 A. Correct.

3 Q. How are these ACDVs assigned to people?

4 A. If you have five associates on one team that handles  
5 the disputes that come in -- if, say, 50 as an example  
6 disputes are in that main cue, then they get distributed to  
7 the five associates to do, conduct the research.

8 Q. After it's assigned, the next step you mentioned was  
9 research. What research is done?

10 A. Based on the dispute, what the dispute is requesting  
11 to, to -- whether in this case provide or confirm complete  
12 ID. That's what they're going to do.

13 Q. Okay. When they are instructed to provide complete ID,  
14 what systems would the analyst have available to them to  
15 confirm that?

16 A. They go back to the REALServicing system to check  
17 because part of the ACDV has the loan number. They check it  
18 by the loan number. The information is through the  
19 REALServicing. They have access to the Vault. And then  
20 they identify the note, the mortgage, and anything else to  
21 confirm the Social Security number.

22 Q. Once the credit analyst goes in and reviews whatever  
23 systems are appropriate for that dispute, what happens next?

24 A. They go ahead -- they respond to e-OSCAR.

25 Q. Okay. So that's step four is response. What -- how is

Sandra Lyew - Cross (Manning)

18

1 the response prepared?

2 A. Through e-OSCAR.

3 Q. Okay. And you were asked at length about ACDV forms  
4 yesterday. I'm not going to go into all those. When you  
5 say the response through e-OSCAR, are you referring to the  
6 ACDV responses?

7 A. The ACDV responses are completed in the e-OSCAR to be  
8 sent back to the credit reporting agency.

9 Q. Okay. So as part of that response, once it's sent is  
10 that the end of the process? Is that resolution of the  
11 dispute?

12 A. No. It -- they have to show the workflow in  
13 REALServicing. So they go ahead and enter the codes, the  
14 ACDV RC, what came in, what type of dispute codes. Again,  
15 it's a template so they have to complete that, as well as  
16 what they, the ACDV FC which is advising that it was, they  
17 did complete.

18 Q. So all those first four steps are all completed before  
19 anything is actually entered into the REALServicing system  
20 on the comment log?

21 A. That is correct.

22 Q. And the entry on the comment log has a date stamp after  
23 all that prior work has been completed?

24 A. That is correct.

25 Q. You mentioned that this loan with the borrower was

Sandra Lyew - Cross (Manning)

19

1 transferred over to Ocwen from another company. Do you  
2 recall that?

3 A. Yes.

4 Q. What company had this loan prior to Ocwen?

5 A. Litton Loan Servicing.

6 Q. Okay. Did Litton Loan Servicing use the same system as  
7 Ocwen or a different system?

8 A. They use a different system called Radar.

9 Q. So for loans that had been transferred over to Ocwen  
10 from Litton, do those credit analysts have access to those  
11 Litton systems?

12 A. Most do.

13 Q. Okay. What's the name of that system?

14 A. Radar.

15 Q. When did that loan, Mr. Daugherty's loan transfer from  
16 Litton to Ocwen?

17 A. Towards the end of 2011.

18 Q. What was the status of Mr. Daugherty's loan when it  
19 transferred from Litton to Ocwen?

20 A. The loan was already delinquent when it transferred  
21 over to Ocwen.

22 Q. Do you recall how delinquent it was?

23 A. It was more than 120 days.

24 Q. A couple of times during the testimony yesterday you  
25 mentioned what you referred to as monthly data. Do you

Sandra Lyew - Cross (Manning)

20

1 recall that?

2 A. Yes.

3 Q. When you refer to monthly data that Ocwen furnishes to  
4 the credit bureaus, what are you talking about?

5 A. There is a monthly data that is sent out to all the  
6 agencies every month middle, towards the middle of the month  
7 giving the status of the loan, a loan.

8 Q. I'm going to show you for identification purposes  
9 Defendant's Exhibit 2.

10 MR. YOUNG: If Mr. Manning is going to move its  
11 admission, we have no objection.

12 THE COURT: What's the number?

13 MR. MANNING: Defendant's Exhibit 2.

14 THE COURT: All right. You're moving it?

15 MR. MANNING: Yes, Judge.

16 THE COURT: All right. Defendant's Exhibit 2 will  
17 be admitted into evidence without objection and can be  
18 published at your discretion.

19 MR. MANNING: Thank you, Judge.

20 THE WITNESS: Do you have a hard copy? It's kind  
21 of blurry.

22 MR. MANNING: Yes. I'm going to put a sticker on  
23 it so we can track it.

24 Your Honor, may I approach the witness?

25 THE COURT: Yes, sir.

Sandra Lyew - Cross (Manning)

21

1 BY MR. MANNING:

2 Q. Ms. Lyew, you have what's been marked as Defendant's  
3 Exhibit 2 in evidence. What is this set of papers that is  
4 identified as that document?

5 A. These are, these are credit reporting screens that's  
6 from REALServicing system.

7 Q. Is this a depiction of the data that is transmitted  
8 electronically through e-OSCAR to the credit bureaus?

9 A. No. As I said, there's nothing that's sent  
10 electronically through e-OSCAR. E-OSCAR -- the electronic  
11 information comes from the CRAs to, through e-OSCAR to the  
12 furnisher or Ocwen.

13 Q. How is this information provided to the credit bureaus?

14 A. This -- a report is -- a report is generated to be  
15 electronically sent to the credit agencies.

16 Q. How often is this data provided to the credit bureaus?

17 A. Monthly.

18 Q. What credit bureaus receive this data?

19 A. All four bureaus; Experian, TransUnion, Equifax and  
20 Innovis.

21 Q. The fourth one you mentioned was Innovis?

22 A. Innovis is a fourth credit reporting agency.

23 Q. Okay. Is the information that Ocwen furnishes on a  
24 monthly basis to the credit bureaus the same for each of  
25 those bureaus?

1 A. Yes.

2 Q. So let's talk about what this document shows. If you  
3 could direct your attention just to the first page, can you  
4 identify the loan number at the top left of this document?

5 A. The last four digits is 4537.

6 Q. Do those match Mr. Daugherty's loan number?

7 A. Yes.

8 Q. How about the Social Security? Do you see the last  
9 four?

10 A. Yes.

11 Q. And, again, the record created -- we're still on that  
12 top left box -- is a date and then a reporting period. Do  
13 you see those two dates?

14 A. Yes.

15 Q. So let's talk about each one. The record created date,  
16 what is that?

17 A. That is the date that it's being generated, or I should  
18 say reported. This is the information that, the date that's  
19 being reported to the credit, the CRAs, and the reporting  
20 period is through the last date which is always a month  
21 prior.

22 Q. Okay. So that's what the reporting period means that  
23 this is -- it's conveying the information about  
24 Mr. Daugherty's account from November and it's being sent  
25 December 9th?

Sandra Lyew - Cross (Manning)

23

1 A. Yes, that's correct.

2 Q. Let's scroll down some. Do you see the address, before  
3 we move, address 35 Valley View Drive?

4 A. Yes, I do.

5 Q. Whose address is that?

6 A. Mr. Daugherty's.

7 Q. Okay. Thank you. Let's scroll down.

8 Now we have -- maybe we can blow this up a little bit.  
9 The boxes can be difficult to read. So account status,  
10 portfolio type, compliance condition code. There's a bunch  
11 of comments in there. Do you see that box, "account  
12 status"?

13 A. Yes.

14 Q. Do you see that those fields mirror fields that appear  
15 on the ACDV response?

16 A. Yes. Do you have the ACDV as well?

17 MR. MANNING: Your Honor, may I approach?

18 THE COURT: Yes, sir.

19 BY MR. MANNING:

20 Q. Ms. Lyew, you have what's been marked as Plaintiff's  
21 Exhibit 27 in front of you. What are these documents?

22 A. These are the ACDV forms.

23 Q. And in the bottom right-hand corner you'll see that  
24 there is a Bates stamp. What does that Bates stamp  
25 indicate?

Sandra Lyew - Cross (Manning)

24

1 A. The Bates stamp of 1341?

2 Q. The actual preface to it. Who produced it?

3 A. Oh, Ocwen.

4 Q. So these are ACDV forms that Ocwen provided?

5 A. That is correct.

6 Q. Now, we can put these on the screen in a little bit.

7 The, the form of this document, you have both the ACDV  
8 response and the monthly data. The monthly data is what's  
9 on the screen that the jury can see. Right?

10 A. Yes.

11 Q. Okay. So in "account status" then we have all these  
12 different fields, and there's one called "compliance  
13 condition code." Do you see that?

14 A. Yes.

15 Q. On this monthly data page, that's blank; right?

16 A. You're talking about this still? Okay. I'm sorry.

17 Q. Yes.

18 A. Yes.

19 Q. There's nothing next to that field?

20 A. No.

21 Q. Now, if you turn to, in the, the hard copy that I gave  
22 you to the Bates stamp OLS 606 I'd like you to look at that  
23 screen.

24 A. Okay.

25 Q. Okay. So please identify for the jury the reporting

Sandra Lyew - Cross (Manning)

25

1 period and the record created dates.

2 A. The record created date was 4-10, 2012. And it was  
3 reporting period through March 31st, 2012.

4 Q. Okay. Now, if you scroll down on this, you'll see next  
5 to that, next to the "account status" box in the top left,  
6 on the top right there's account dates. Do you see those?

7 A. Yes.

8 Q. Account date for date opened, can you identify what  
9 that date is?

10 A. This is showing August 26th, 1999; and last payment  
11 date March 20th, 2012.

12 Q. Okay. So date opened, I just want to focus on that  
13 first. What does that indicate about Mr. Daugherty's loan?

14 A. This is the date that he signed the note and mortgage.

15 Q. Okay. Now, if you turn to the next page, OLS 607,  
16 you'll see I'm looking at that same box, "account date."

17 And you'll see that the date opened has been modified. Do  
18 you see that date?

19 A. Yes, it has been.

20 Q. What is that date?

21 A. July 20th, 1999.

22 Q. Why was that date modified?

23 A. It was modified because Litton had the incorrect open  
24 date. And when the loan transferred to Ocwen, once they  
25 conducted their, their quality assurance, the note and

Sandra Lyew - Cross (Manning)

26

1 mortgage did not match the open date that was, that was  
2 transferred over to Ocwen. So they went ahead and had the  
3 date changed in our system as well as forwarding it to the  
4 credit reporting agencies when it's reported monthly.

5 Q. Thank you. Now, if you look to the, the bottom  
6 right-hand, you'll see an "account history" box.

7 A. Yes.

8 Q. What does the "account history" box show?

9 A. It identifies the, the months of delinquency from  
10 December, 2011, January, February, and March.

11 Q. So this is a little bit difficult for me to understand.  
12 Do you see the row for 2011?

13 A. Yes.

14 Q. So I take it December, 2011, there's a 3. Do you see  
15 that box?

16 A. Yes.

17 Q. What does that mean?

18 A. That means the loan was 90 days past due.

19 Q. So 3 means three months past due?

20 A. Yes.

21 Q. Now, if you go one row up from there, we're looking at  
22 the row for 2012. In January there's a 2. In February  
23 there's a 3. And in March there's a 4. Is that right?

24 A. That is correct.

25 Q. Okay. So this monthly data that's being furnished by

Sandra Lyew - Cross (Manning)

27

1 Ocwen to the credit bureaus is telling them in this box for  
2 March, 2012, that the account is four months behind?

3 A. That is correct.

4 Q. So could we scroll up some? Zoom out first. And  
5 what -- let's go to the previous page, okay, to the account  
6 status. Do you see the "account status" field? There's a  
7 little drop-down menu, an arrow that you can click. What's  
8 the code that's put in there?

9 A. 82.

10 Q. What does 82 mean?

11 A. It identifies the account status.

12 Q. Do you know what that stands for?

13 A. Delinquent.

14 Q. Okay. Do you know how many months delinquent it  
15 represents?

16 A. As of February, or I should say through March 31st,  
17 2012, he was delinquent 90 days.

18 Q. Okay. Do you see under "account balances" on this same  
19 page where it says "amount past due"?

20 A. Yes.

21 Q. What is the amount past due?

22 A. \$6,128.39.

23 Q. And you saw a number of documents with that same amount  
24 on it yesterday?

25 A. Yes.

Sandra Lyew - Cross (Manning)

28

1 Q. Now, let's go to the next page, 607. And you can see  
2 that under "account status" there's a new box -- well, I  
3 misspoke. It's not a new box. It has a new code. What's  
4 the code?

5 A. The code is 11.

6 Q. What does 11 mean?

7 A. 11 I don't remember, but if you go down to the account  
8 balance it's showing zero past due. And that's through  
9 April 30th, 2012.

10 Q. So it may refresh your memory to look at the other  
11 documents you have in front of you, the ACDVs from Ocwen.

12 A. Yes.

13 Q. Do you see those in front of you?

14 A. Yes.

15 Q. And you'll see that the first page has an account  
16 status code of 11?

17 A. Yes.

18 Q. What is written next to that?

19 A. "Account current."

20 Q. Okay. So the prior screen with the old opening date  
21 had the borrower delinquent and a past due amount; correct?

22 A. That is correct.

23 Q. This screen has him current, zero past due, and the  
24 date opened has been corrected?

25 A. That is correct.

Sandra Lyew - Cross (Manning)

29

1 Q. Now, if you could turn to OLS 625.

2 A. Okay.

3 Q. You'll see a lot of the same information about loan  
4 number, Social Security, address, et cetera. I'd like you  
5 to focus on the bottom half of the page where again it's  
6 showing account status with a code 11; right?

7 A. Yes.

8 Q. And in this document you'll see there's a compliance  
9 condition code?

10 A. Yes.

11 Q. What's --

12 A. XB.

13 Q. When Ocwen was furnishing data to the credit bureaus  
14 that this account had a compliance condition code of XB,  
15 what does that mean?

16 A. That means that the account is in dispute.

17 Q. What's the amount past due at this point?

18 A. Zero.

19 Q. What's the account status code?

20 A. 11.

21 Q. Now, let's blow up the account history if you could,  
22 not you, Ms. Lyew. I'll be more specific in my terms.  
23 Let's look at the account history piece if you could focus  
24 there. You'll see that now we have another row populated  
25 for 2013. Do you see that?

Sandra Lyew - Cross (Manning)

30

1 A. Yes.

2 Q. And there's all zeros with the exception of one month.

3 What do the zeros indicate?

4 A. That the account is current.

5 Q. The exception to that is March, 2013. What does the 1  
6 indicate?

7 A. The 1 indicates that the borrower was 30 days past due.

8 Q. Why was Mr. Daugherty past due in March, 2013?

9 A. I don't know.

10 Q. Okay. We are done with that document. Thank you.

11 So we've talked now about direct and indirect disputes.  
12 I want to get more specific on the indirect disputes.

13 When a credit analyst receives an ACDV response and  
14 does the research, how do they know what codes to respond  
15 with?

16 A. That's part of their procedures. They have codes that  
17 they have to abide by. The codes that are used for e-OSCAR  
18 are also, we also use the same codes in REALServicing.

19 Q. I'd like, I'd like to ask you -- I started about  
20 training and I'd like to ask you about training again. And  
21 I want you to start with telling me about the credit  
22 reporting department and their training that they receive  
23 prior to being on the floor for actually doing the work.

24 A. Okay. They receive a one-month training class. That  
25 consists of two weeks classroom training which involves the

Sandra Lyew - Cross (Manning)

31

1 learning materials, the, their training manual, learning the  
2 REALServicing system, the Vault, as well as e-OSCAR.

3 Q. So after the classroom piece, the next piece you had  
4 mentioned was shadowing. What does the shadowing training  
5 piece consist of?

6 A. Yes. So the -- they do shadow for two weeks as part of  
7 the training process side-by-side with an experienced  
8 analyst or associate depending on their, their position.

9 Q. So two weeks in class, two weeks shadowing. What  
10 happens next?

11 A. And then they go live.

12 Q. Okay. Once, once the analyst goes live and is able to  
13 respond to either direct or indirect disputes, is there any  
14 supervision of those individuals?

15 A. There's always supervision to assure the quality  
16 assurance. The supervisors also do random, random pulling  
17 on disputes that, whether you're experienced or a new  
18 employee just to assure that everything is going correctly  
19 and that's in compliance.

20 Q. So let me make sure I understand that. The compliance  
21 department, which is separate from credit, is, --

22 A. That is correct.

23 Q. -- is doing random sampling?

24 A. No. The credit reporting supervisors do random pulling  
25 of employees' work to confirm that they are in compliance

Sandra Lyew - Cross (Manning)

32

1 to, and doing what they're supposed to do.

2 Q. The monthly data that we were just looking at, are you  
3 aware of any time when Ocwen was furnishing data to the  
4 credit bureaus through those monthly data packets that it  
5 was incorrect?

6 A. No.

7 Q. Now, I'd like to show you another document. We looked  
8 at it at length yesterday. It's Plaintiff's Exhibit 26.  
9 And I'll hand you a copy.

10 Plaintiff's Exhibit 26 is a very lengthy document. The  
11 first page of it has a Bates stamp. And this is how I'm  
12 going to orient us as we go through this. The bottom corner  
13 has 1635. And then the last corner --

14 A. I don't have 1635.

15 Q. What's your first page?

16 A. 1636.

17 Q. I'll give you mine.

18 A. Unless it's in another section here.

19 MR. YOUNG: This document hasn't been admitted.

20 MR. MANNING: Plaintiff's Exhibit 26.

21 THE COURT: It's not being published.

22 MR. YOUNG: Excuse me, Your Honor?

23 THE COURT: It is not being published.

24 MR. YOUNG: Thank you.

25 BY MR. MANNING:

Sandra Lyew - Cross (Manning)

33

1 Q. So, Plaintiff's Exhibit 26, the document that the  
2 plaintiffs have marked as evidence, has a different first  
3 page; right? It's 16 --

4 A. 1636.

5 Q. 1636. I handed you a page that's prior to that. What  
6 is that page?

7 A. This is a detailed transaction history.

8 MR. YOUNG: Your Honor, if counsel wants to make  
9 that part of 26, I have no objection.

10 THE COURT: All right. I'll leave that to Mr.  
11 Manning.

12 MR. YOUNG: Okay.

13 MR. MANNING: Thank you, Judge. Just for clarity  
14 sake, rather than altering what plaintiffs marked, I'll just  
15 make it Defendant's 3.

16 THE COURT: All right.

17 BY MR. MANNING:

18 Q. So we'll talk about the missing page first. What's  
19 that page?

20 A. A detailed transaction history.

21 Q. What does the detailed transaction history show?

22 A. It identifies the balance, any escrow balances, total  
23 amounts, principal, any payments being received,  
24 disbursements, if taxes are being paid, insurance. It just  
25 identifies the whole payment section for -- this is for the

Sandra Lyew - Cross (Manning)

34

1 cashiering department.

2 Q. Okay. Let's put this on the screen for the jury  
3 because --

4 MR. MANNING: Oh, Your Honor, I'd move for the  
5 admission of Defendant's 3.

6 THE COURT: Any objection, Mr. Young?

7 MR. YOUNG: No objection, Your Honor. I would  
8 note that Exhibit 26 has the payment history as the last two  
9 pages of the exhibit.

10 THE COURT: All right. Defendant's Exhibit Number  
11 3 will be admitted without objection and can be published at  
12 your discretion, Mr. Manning.

13 MR. MANNING: Okay. By my review, they're  
14 different so let's stick with Defendant's Exhibit 3.

15 THE COURT: If they are the same, I would admit  
16 them just for ease of handling, counsel. Go ahead.

17 THE WITNESS: One is just easier to read than the  
18 other. This one is more detailed.

19 MR. MANNING: Thank you, Judge.

20 THE COURT: Go ahead.

21 BY MR. MANNING:

22 Q. Let's, let's pull this up if we can. I know there's a  
23 lot of data on this sheet. Let's take it in sections.

24 If you go to the top, it has borrower's name, property  
25 address, next due, the mailing address, and then a whole

Sandra Lyew - Cross (Manning)

35

1 series of entries below that. And let's just -- if you  
2 could, for the jury identify at the top the heading of each  
3 of those columns. What columns are being represented?

4 A. The loan number, the borrower's name, the property  
5 address, the next due date, the mailing address, the  
6 interest rate, the principal balance, and the escrow  
7 balance.

8 Q. Now, let's go down below that where it says  
9 "transaction."

10 A. Yes.

11 Q. Could you read those headings off for the jury, please?

12 A. The effective date, the time, the description, the next  
13 due date, after principal, which was principal, principal  
14 balance. As payments are received, it gets reduced. The  
15 balance escrow, the total amount, which would be the total  
16 amount of payment that was received, principal balance,  
17 interest, escrow, suspense, other.

18 Q. Thank you. So let's scroll all the way to the bottom  
19 now and it has the last date of a payment received  
20 August 1st; is that right?

21 A. That's correct.

22 Q. It identifies it as a regular payment. Do you see  
23 that?

24 A. Yes.

25 Q. Let's scroll over to the right and see what the payment

Sandra Lyew - Cross (Manning)

36

1 amount was.

2 A. The payment amount received was nine sixty-eight zero  
3 eight.

4 Q. What does that reflect in terms of what was received by  
5 Ocwen from the borrower at that date?

6 A. This was a payment that was received by the borrower.

7 Q. I think you said by the borrower. Do you mean from the  
8 borrower?

9 A. From the borrower. I'm sorry.

10 Q. Okay. Thank you. So that, that reflects the last  
11 payment?

12 A. Yes.

13 Q. Now, let's go to the top where we can see the first  
14 payment on the far left. It has a couple of entries prior  
15 to the first regular payment. Is that right?

16 A. Yes.

17 Q. All right. What does "new loan" mean?

18 A. That is the description that is placed into  
19 REALServicing when a loan is transferred into, from one  
20 servicer to Ocwen's system.

21 Q. Okay. Then when do you see the first regular payment  
22 that came in from the borrower on this loan?

23 A. July 19th, 2012.

24 Q. All right. There are a couple of entries above that  
25 that have a code of something else. What's being reflected

1 there?

2 A. It says "for multiple spread," between "spread" and --  
3 I'll just keep it as "multiple."

4 Q. And the 4-20, 2012, that's the timing of when Mr.  
5 Daugherty had gotten his loan reinstated; right?

6 A. That's when he reinstated his loan.

7 Q. At that point, he had gotten current and then he began  
8 making regular payments?

9 A. That is correct.

10 Q. So for the first roughly five months, Mr. Daugherty is  
11 past due and referred to foreclosure?

12 A. Yes.

13 Q. Now, if you could turn back. Put Defendant's Exhibit 3  
14 to the side and let's talk about Plaintiff's Exhibit 26.

15 This is the comment history that you were asked about  
16 yesterday. Let's publish this. Okay. So when you started  
17 today, you talked about what this document is. What  
18 information is contained in this comment log about  
19 Mr. Daugherty's loan?

20 A. Everything.

21 Q. I'm going to try to be more specific with that and turn  
22 to Page OLS 1727.

23 A. Okay.

24 Q. Thank you. So the first entry on 1727 has a date  
25 April 23rd, 2014. And if you follow it over to the

Sandra Lyew - Cross (Manning)

38

1 right-hand side, it says "BWR automated CDV." Is that  
2 right?

3 A. Yes.

4 Q. Okay. What is being reflected by the entry that was  
5 made by the credit analyst at this time?

6 A. It's identifying what was received.

7 Q. What is identified as the borrower's concern?

8 A. Disputes present/previous account status, payment  
9 history profile, payment rating. And then it says "verify  
10 payment history profile, account status, and payment  
11 rating."

12 Q. And then below that there's another entry same date  
13 five seconds later that says "completed." Do you see that?

14 A. Yes.

15 Q. Okay. And the entry there reflects what?

16 A. The entry stating -- are you -- advising what was sent?

17 Q. That was a bad question. I'm sorry.

18 A. Yeah.

19 Q. What is the entry that the credit analyst made at that  
20 time?

21 A. Code 11 -- account status 11, current account as of  
22 March, 2014.

23 Q. So you began your deposition by saying that the four  
24 prior steps in a dispute resolution process had occurred  
25 prior to those two entries being made; is that right?

Sandra Lyew - Cross (Manning)

39

1 A. That is correct.

2 Q. Now, I want, I want you to have the Equifax document  
3 that you were asked about yesterday so that we can see that  
4 while you have that comment log page in front of you.

5 A. I don't have the Equifax.

6 Q. I'm going to get it for you.

7 A. Oh, okay.

8 Q. So you have in front of you Plaintiff's 18. It has an  
9 identification number as EIS 276. Do you see that?

10 A. 276? I'm sorry. Where are you at?

11 Q. Yeah. I'm on the Equifax document.

12 A. Oh, okay.

13 Q. And that's a Bates stamp. It's just a tracking number.  
14 It says EIS 276.

15 A. Okay.

16 Q. Now, if you recall from yesterday, this is one of the  
17 documents that you were asked about with -- matching the  
18 control number up against the comment logs that you could  
19 see. This Equifax document has the same control number as  
20 what's being entered into the comment log.

21 A. Yes.

22 Q. Okay. We're on the same page. Now, this is the  
23 document that we've talked about already in the trial. Do  
24 you see how below a number of these fields there are rows  
25 that have a slightly darker shade?

Sandra Lyew - Cross (Manning)

40

1 A. On this?

2 Q. Okay. I'm sorry. Let me try it this way. I'm going  
3 to ask you to focus specifically on "account type."

4 A. Okay.

5 Q. In "account type" you'll see that there's two white  
6 rows below that.

7 A. Yes.

8 Q. The top row is a little bit lighter on my copy. It may  
9 not be on yours. But the second row has information that's  
10 being modified. Do you see that?

11 A. Yes.

12 Q. Okay. So, now, if you look at the date open, you'll  
13 see that Equifax had a date open of August, 1999. And Ocwen  
14 is requesting it be modified to July, 1999. Do you see  
15 that?

16 A. Yes.

17 Q. And we saw those same dates on the monthly data that  
18 we've already identified; right?

19 A. Yes.

20 Q. The next field below that there's three fields that  
21 have, again, that darker bold shade. High credit is the  
22 same. Current balance is different. And past due is  
23 different. Do you see that?

24 A. Yes.

25 Q. Okay. So let's focus on the past due column. Do you

Sandra Lyew - Cross (Manning)

41

1 see the first row there? It has an amount \$6,128?

2 A. Yes.

3 Q. We saw that number also on the monthly data. That was  
4 that sheet that had the old incorrect open date; right?

5 A. Yes.

6 Q. And then Ocwen is requesting that Equifax modify that  
7 also and reflect it as zero; right?

8 A. Yes.

9 Q. Below that you'll see "last payment date." Do you see  
10 that there's a date in bold that's a request from Ocwen to  
11 modify it as March, 2014?

12 A. Yes.

13 Q. So Equifax was reporting that the last payment date was  
14 January, 2012. Ocwen requested it be modified to March,  
15 2014.

16 A. Yes.

17 Q. All those fields that reflect Ocwen is requesting that  
18 Equifax fix something are -- there's, there's a number of  
19 them. Could you just count, count those and tell me how  
20 many you see that were requests to modify?

21 A. I'm just going to count again.

22 Q. Okay, sure. I know it's hard to read.

23 A. 19.

24 Q. My count was a little lower. But, regardless, the  
25 point is there's a number of fields that Ocwen is requesting

Sandra Lyew - Cross (Manning)

42

1 Equifax modify?

2 A. Yes.

3 Q. Okay. Now, if we look back at the comment log, you'll  
4 see that none of that work is being identified in the  
5 comment log that corresponds with that ACDV response; right?

6 A. Correct.

7 Q. So in the comment log it doesn't say that there was any  
8 research done?

9 A. Correct.

10 Q. Well, how did he know what fields to put in here?

11 A. Again, it's done prior to the entries. The, the codes  
12 entered into REALServicing is identifying what was received  
13 and what -- and, and it was completed. Why it didn't get  
14 into full details, I don't know.

15 However, again, it falls back to this is just part of  
16 the, showing the workflow into REALServicing. But  
17 everything goes through the e-OSCAR and that's sent prior to  
18 the entries into REALServicing.

19 Q. The analyst who made this entry in the comment log, in  
20 addition to not identifying the work that he or she did,  
21 doesn't identify what systems he or she used; right?

22 A. Correct.

23 Q. So this data -- I mean, was it just a guess? Where did  
24 they get it from?

25 A. They conducted their full research, again prior to,

Sandra Lyew - Cross (Manning)

43

1 prior to making any of these entries. And the research is  
2 conducted again through REALServicing, through the Vault,  
3 just get all -- and they have their -- the screen -- they  
4 have -- each department has certain screens. They --  
5 screens that they deal with for that department.

6 Taxes have their own taxes screen that they can only  
7 make entries. In this case, the credit reporting department  
8 has their own screens that they deal with in REALServicing  
9 as well. And they, they don't have access to any other  
10 departments.

11 Q. Okay. So the monthly data fields that, that -- the  
12 monthly furnishing data that we looked at already, would  
13 that be available to the credit analyst who was responding  
14 to an ACDV?

15 A. The associate has access to view it. The analysts have  
16 access to, to correct it.

17 Q. Where, where is that data housed internally at Ocwen?

18 A. The data?

19 Q. Yes.

20 A. The REALServicing?

21 Q. Well, that's what I'm asking. The monthly data and --  
22 I know I'm asking without showing you. Defendant's Exhibit  
23 2 is the monthly data. That's what I'm asking you about.  
24 What, what system at Ocwen houses that data?

25 A. This is in REALServicing.

Sandra Lyew - Cross (Manning)

44

1 Q. Okay. So when you were saying credit analysts have  
2 access to REALServicing, that data is included?

3 A. Yes.

4 Q. I just wanted to give you the binder that has the ACDV  
5 responses. I know you have like four things in front of you  
6 now, but we're going to do the best we can to correspond all  
7 of these.

8 We talked about the comment log, the Equifax ACDV. Now  
9 I want to show you the corresponding Ocwen ACDV. It's  
10 already been marked as Plaintiff's Exhibit 27. And just so  
11 you know where I am, Ms. Lyew, the Bates stamp in the bottom  
12 right is OLS 1343.

13 A. Okay.

14 Q. Okay. OLS 1343, do you have that in front of you?

15 A. Yes.

16 Q. Okay. So this has -- and the account number, once  
17 again, is the same throughout all these documents; right?

18 A. Yes.

19 Q. And then it has a control number which corresponds to  
20 both the comment log and Equifax's response?

21 A. Yes.

22 Q. All right. So could you please identify what the  
23 dispute is that was received?

24 A. The dispute code?

25 Q. Yes, in the first row, dispute code 1.

Sandra Lyew - Cross (Manning)

45

1 A. Okay. It says, "Disputes present/previous account  
2 status, payment history profile, payment rating. Verify  
3 payment history profile, account status, and payment  
4 rating."

5 Q. Now, that code has corresponding instructions from  
6 Equifax as to what Ocwen is to do next to it. What does  
7 that say?

8 A. "Verify payment, payment history profile, account  
9 status and payment rating."

10 Q. Those three things that Ocwen is being instructed to  
11 review corresponds with fields on this page; right?

12 A. Yes.

13 Q. So let's take them one at a time. Payment history  
14 profile, where does that appear?

15 A. That would be in the -- Page 2.

16 Q. Okay. And this payment history, this box with various  
17 years on the left-hand column with white "request" rows and  
18 gray "request" rows below it mirrors the data that we looked  
19 at that Ocwen has in its internal system?

20 A. Correct.

21 Q. Now, when I say "mirrors," I'm not saying they're all  
22 identical. I'm saying the format of it mirrors it. It  
23 looks the same.

24 A. Similar, yes.

25 Q. Okay, similar. So when we're talking about this, do

Sandra Lyew - Cross (Manning)

46

1 you see here where there's a number of fields that Ocwen  
2 requested Equifax modify? Do you see that?

3 A. Ocwen's response? You're talking about Ocwen's  
4 response?

5 Q. Yes.

6 A. Okay.

7 Q. We're still on the payment history. There's a number  
8 of rows. I'm not doing a great job guiding you, so let me  
9 get more specific.

10 A. Just tell me the year.

11 Q. Do you see 2013?

12 A. Yeah.

13 Q. There's "request" and "response." Do you see any boxes  
14 where Ocwen is requesting that that information be modified?

15 A. Yes.

16 Q. Let's just focus on 2013. How many different boxes did  
17 Ocwen request be modified?

18 A. The whole 12 months.

19 Q. And it looks like they were all changed to zeros except  
20 for one month?

21 A. Correct.

22 Q. And that one month is March, 2013?

23 A. Correct.

24 Q. We've already looked at the monthly data that shows the  
25 same thing; right?

Sandra Lyew - Cross (Manning)

47

1 A. Yes.

2 Q. So Ocwen's sending monthly data. Equifax is getting it  
3 wrong. Ocwen tells them again here, "Please fix those  
4 months."

5 A. Yes.

6 Q. Okay. That's all just what I'm calling one field,  
7 payment history.

8 A. Correct.

9 Q. And there's other fields on here. I'm not going to  
10 belabor the point. Let's go back to Page 1.

11 So we've checked one off the list, payment history.  
12 Now let's talk about the second field that they're  
13 instructed to review. What is the second field?

14 A. Account status.

15 Q. All right. Where does that appear on this document?

16 A. In "account information" on the bottom, close to the  
17 bottom, first row.

18 Q. Okay. So here there's another change. What is it?

19 A. Identifying that the account is current.

20 Q. And there are codes?

21 A. Yes, code 11.

22 Q. And that was changed to 11 from what?

23 A. 82.

24 Q. Okay. So that's the second field in the instructions.  
25 What's the third field?

Sandra Lyew - Cross (Manning)

48

1 A. MOP.

2 Q. If you look at dispute code 1, there's a code 106. And  
3 then next to the code there's the instructions. We've  
4 talked about payment history, account status, and then  
5 there's a third field.

6 A. The payment rating?

7 Q. Yes.

8 A. Okay.

9 Q. Where would, where would I find payment rating on this?

10 A. The same section as the account information below the  
11 account status.

12 Q. All right. This field appears to be blank on both  
13 Equifax and Ocwen's; is that right?

14 A. The response is blank.

15 Q. And, again, that was a bad question. I apologize. I'm  
16 only asking you to look at the Ocwen ACDV. Under "account  
17 status" field there's a white column reflecting what Equifax  
18 is requesting. And do you see under "payment rating" how  
19 that field is blank?

20 A. Yes.

21 Q. And then similarly the response from Ocwen is blank?

22 A. Yes.

23 Q. Were there any other dispute codes identified by  
24 Equifax?

25 A. No.

Sandra Lyew - Cross (Manning)

49

1 Q. Were there any other instructions or information  
2 provided about the borrower's dispute that Equifax received?

3 A. No.

4 Q. Okay. Now, I'd like you to look at the monthly data --  
5 I'm sorry, my mistake -- the comment log which is  
6 Plaintiff's Exhibit 26. That's the big binder. And I'm  
7 going to give you a specific -- let me get the others. So  
8 do you have the account log in front of you?

9 A. Yes. What page?

10 Q. Page -- it has a Bates stamp of OLS 1734.

11 A. Okay.

12 Q. All right. So on this page if you look at June 16th,  
13 2014, and follow that over to the right-hand side you'll see  
14 "borrower" and it's an abbreviation, BWR, "automated CDV."  
15 Do you see that?

16 A. Okay.

17 Q. There's a control number for the ACDV received and it  
18 ends 8129; right?

19 A. Correct.

20 Q. Now, I'm going to hand you another exhibit, the Equifax  
21 ACDV that corresponds to this. It is already in evidence as  
22 Plaintiff's 21. On Plaintiff's 21 if you could turn to EIS  
23 322.

24 A. You're going to have to give me that exhibit.

25 Q. I'm sorry.

Sandra Lyew - Cross (Manning)

50

1 A. Thank you.

2 Q. Okay. I know there's a lot of paper. I'm sorry about  
3 that. The Equifax document that is an ACDV response has the  
4 same control number ending 1129?

5 A. Yes.

6 Q. Now, it's similar to the last one we saw. There are a  
7 number of different fields that are being requested by Ocwen  
8 that Equifax modify; right?

9 A. Yes.

10 Q. So this document has a date, a date created in the  
11 upper left-hand column that says June 3rd, 2014?

12 A. I'm sorry. You are --

13 Q. Still on the Equifax document.

14 A. Oh, yes, yes. I see it now. Okay. Thank you. And  
15 the response date -- the due date is June 23rd, 2014.

16 Q. Yes. So this document is two months later from the one  
17 we just saw in April?

18 A. Correct.

19 Q. And this one also has various fields. Again, we don't  
20 have to go through all of them. I'm just going to highlight  
21 to "date open." Do you see there's a "request" and a  
22 "modify"?

23 A. Yes.

24 Q. And they're the same as two months ago when Ocwen  
25 requested that Equifax modify the incorrect date open?

Sandra Lyew - Cross (Manning)

51

1 A. Correct.

2 Q. Similar, paid -- "past due," do you see there's that  
3 same number which goes all the way back to when  
4 Mr. Daugherty was in default \$6,128?

5 A. Correct.

6 Q. And then the zero --

7 A. Yes.

8 Q. -- is what Ocwen is saying, "Please fix this;" right?

9 A. Yes.

10 Q. Okay. This one at the bottom, there's -- again,  
11 there's codes all over the place. But what I'm pointing out  
12 to you is the account status. This is one of the fields  
13 that's within the dispute that's identified. Do you see the  
14 account status 82 meaning 120 days past due? Ocwen is  
15 telling Equifax, "Change this to current account."

16 A. Correct.

17 Q. There's -- there was some discussion yesterday about  
18 special comment code. Do you know what that means?

19 A. No.

20 Q. You're not a fair credit reporting expert; right?

21 A. No, I'm not.

22 Q. Have you had -- I mean, you mentioned a bunch of  
23 training that credit analysts receive. Did you receive any  
24 training in credit or dispute resolution?

25 A. I'm -- I never worked in the credit reporting

Sandra Lyew - Cross (Manning)

52

1 department.

2 Q. The account status here of "current account" is being  
3 requested to be, to be altered. And now I'd like -- now  
4 that we've seen what that -- the modifications Ocwen is  
5 requesting, I'd like you to look back at the comment log.

6 A. Equifax is requesting?

7 Q. I'll, I'll clarify my question. Equifax is requesting  
8 certain things per the dispute code --

9 A. Yes.

10 Q. -- that Ocwen investigate?

11 A. Correct.

12 Q. Ocwen is responding to Equifax that certain things need  
13 to be fixed?

14 A. Correct.

15 Q. Thank you. Now we'll go to the comment log. And the  
16 comment log 1734, this is the same entry -- let's see if we  
17 can make this a little bit easier. I'm going to give you a  
18 highlighter so you can point out on the screen and highlight  
19 the relevant piece; not this screen, the document here.

20 A. Oh, okay.

21 Q. So we can find our place. So I'm talking about  
22 June 16th, 2014. There's the ACDV received. You already  
23 talked about how that's the last step. This document was  
24 created June 3rd. This entry is being made June 16th.

25 Right?

Sandra Lyew - Cross (Manning)

53

1 A. Yes.

2 Q. So we're talking about two weeks later?

3 A. Yes.

4 Q. Now, similarly in this comment if we could scroll over  
5 just to show the entries that are being made on the comment  
6 log, you'll see what the credit analyst who handled this  
7 dispute entered following their work. Do you see that?

8 A. The reporting to the credit bureau section?

9 Q. I'm looking under the control number.

10 A. Okay, so the ACDV RC code placed. And then we have  
11 Mr. Daugherty's name, the control number.

12 Q. This, this is a different control number, so I need to  
13 clarify that on the record. This, this control number  
14 doesn't correspond and that's my mistake. I apologize. Let  
15 me find the right one. Okay. You need to turn to OLS 1736.

16 A. Okay.

17 Q. Are you there?

18 A. Yes, I am.

19 Q. And for the record, the last four digits of the control  
20 number are 1129?

21 A. Correct.

22 Q. Can you confirm for me that you have an Equifax ACDV  
23 response with the same last four control number in front of  
24 you?

25 A. Okay.

Sandra Lyew - Cross (Manning)

54

1 Q. Okay. So now I know we're shuffling a lot of paper.  
2 You've got the comment log, Plaintiff's Exhibit 26, Page  
3 1736?

4 A. Yes.

5 Q. You've got the Equifax document which is Plaintiff's  
6 21, EIS 322?

7 A. Yes.

8 Q. And now you've got Ocwen's ACDV response which is part  
9 of Plaintiff's 27, OLS 1357.

10 A. Correct.

11 Q. Okay, great. Thank you. So number of fields being  
12 requested by Ocwen to be modified. Now we're going to look  
13 at the comment log. Can you tell me what the entry made on  
14 June 19th, 2014, reflects was received from Equifax?

15 A. Code 106, "disputes present/previous account status,  
16 payment history profile, payment rating." And then it is  
17 requesting to verify payment history profile, account  
18 status, and payment rating.

19 Q. And then on the next page there's that follow-up entry  
20 which is completed.

21 A. Correct.

22 Q. As you talked about a lot yesterday, that follow-up  
23 entry is made five seconds later. Do you see it?

24 A. Yes.

25 Q. Okay. So all of this work that's being done by Ocwen's

Sandra Lyew - Cross (Manning)

55

1 credit analyst and being put into a document, there's no way  
2 that could have been done in five seconds; right?

3 A. Correct.

4 Q. And the numbers on it match Ocwen's monthly data?

5 A. Correct.

6 Q. Which is in REALServicing?

7 A. That is correct.

8 Q. And, so, in order to get that data, Ocwen's credit  
9 analyst would have to go into that system, find the right  
10 page, and then compare and pull the data into the ACDV  
11 response?

12 A. Can you repeat that?

13 Q. Yeah, bad question. The Ocwen credit analyst would --  
14 in part of the research would go to REALServicing?

15 A. Yes.

16 Q. Then they would identify the correct time period of the  
17 monthly data?

18 A. Yes.

19 Q. Then they would take that information field by field  
20 and plug it into the ACDV response?

21 A. Yes. You mean enter it into the --

22 Q. Yeah. I keep using "plug it in." I'm sorry. Type it.

23 A. Yeah, enter it into the e-OSCAR ACDV response.

24 Q. So maybe, maybe I need to clarify. Does that mean  
25 somebody's literally looking at a screen and then looking at

Sandra Lyew - Cross (Manning)

56

1 a different screen or opening and closing fields? How does  
2 all that work?

3 A. Yeah. They have to come out of the REALServicing to,  
4 to open up the e-OSCAR and log into the e-OSCAR based on the  
5 IDs and passwords that was provided to them and enter all  
6 the information that they research.

7 So this is why they research first and have their  
8 findings so that they can enter it into the e-OSCAR system  
9 to respond to the CRA.

10 Q. Okay. How long does that process take?

11 A. It varies on the dispute. So it can run from up to 10  
12 minutes to days or even weeks. The CRA, the CRA agencies  
13 give them 22 days to, to respond back. So they have, they  
14 have a -- they have to respond by the date that is provided  
15 on the request.

16 Q. So on that -- on any of these documents, the three sets  
17 of documents you have in front of you, Ocwen's ACDV  
18 response, Equifax's ACDV response, and the comment log, I  
19 don't see any date that shows when Ocwen actually received  
20 it.

21 A. No. It would show on the ACD form when it was received  
22 and responded to. Let's see here. This is just the  
23 response date and it has the due date on the ACDV form.

24 Q. Okay. Let's put that one up. It's Plaintiff's 27. I  
25 have it. So just to point out what we're talking about, OLS

Sandra Lyew - Cross (Manning)

57

1 1357 -- and, Ms. Lyew, you were talking about the response  
2 date and the response due date. Is that right?

3 A. Correct.

4 Q. So it does -- the ACDV form that Ocwen has does show a  
5 date that the response was made and a date that the response  
6 was due, but it doesn't say when Ocwen actually received it?

7 A. No.

8 Q. Do you know if you compared that to the Equifax ACDV  
9 response in front of you? It has a date created; right?

10 A. Yes, it does.

11 Q. Do you know if that's the date that Ocwen received it?

12 A. I don't know.

13 Q. Okay. That's fair. That date is about two weeks  
14 before the response was made?

15 A. Correct. As long as it's completed prior to the due  
16 date, they have 22 days to complete.

17 Q. And you're not aware of any of these responses that  
18 were ever late; right?

19 A. Based on my review for this, it's never been late.

20 MR. MANNING: Your Honor, I'm about to transition  
21 to a different document. Should I keep going or are we  
22 about at our morning break?

23 THE COURT: If this is a good time, I'll give the  
24 jury a break, Mr. Manning.

25 MR. MANNING: Thank you, Judge.

Sandra Lyew - Cross (Manning)

58

1                   THE COURT: All right. Thank you.

2                   Ladies and gentlemen of the jury, I'm going to recess  
3 you at this time. Do not discuss the case among yourselves  
4 or permit anyone to discuss it with you or in your presence.  
5 And please be in your jury lounge at five minutes till the  
6 hour. We'll stand in recess.

7                   (Recess taken from 10:37 a.m. until 10:57 a.m.)

8                   THE COURT: Mr. Manning.

9                   MR. MANNING: Thank you, Your Honor.

10 BY MR. MANNING:

11 Q. Ms. Lyew, do you still have the comment log in front of  
12 you, Plaintiff's Exhibit 18 -- I'm sorry -- 26?

13 A. Yes, I do.

14 Q. I'd like you to turn to Bates stamp OLS 1739, please.

15 A. Okay.

16 Q. We can scroll -- do you see the text of the entry --  
17 this is June 26th, 2014. Richard Hightower made an entry;  
18 correct?

19 A. Yes.

20 Q. Okay. Now, we'll look at what, what's written here.  
21 What is being entered into this system as of that date and  
22 time as indicated by this document?

23 A. In the middle portion when it's beginning --

24 Q. I'm starting at the top, June 26th, 2014.

25 A. The heading?

Sandra Lyew - Cross (Manning)

59

1 Q. Yes.

2 A. "Consumer Financial Protection Bureau dispute  
3 completed."

4 Q. Then if you go to the next page, there's a Bates stamp  
5 1740. And there's an entry July 2nd where there's another  
6 CFPB dispute completed entered.

7 A. Yes.

8 Q. And if you go towards that middle paragraph, just take  
9 a moment and review that so you can tell me what's going on  
10 in this, this entry. What is Mr. Hightower entering into  
11 the comment log in REALServicing as of that date and time?

12 A. You want me to read it?

13 Q. Just to yourself. You don't need to do it verbatim.

14 A. Oh, okay.

15 Q. So there's two paragraphs in the middle there that  
16 says, "Ocwen is obligated to report true and accurate  
17 information to the credit bureaus. Therefore, the credit  
18 reporting cannot be changed. We report to Equifax,  
19 TransUnion, Experian, and Innovis." Do you see where I'm  
20 reading?

21 A. Yes.

22 Q. So below that it says, "However, in an effort to assist  
23 David Daugherty, Ocwen's records indicate on July 2nd, 2014,  
24 this office submitted a credit update to the four major  
25 credit reporting agencies." Do you see where I'm reading?

Sandra Lyew - Cross (Manning)

60

1 A. Yes.

2 Q. So what credit update is being referred to there?

3 A. The Automated Universal Data to all four bureaus.

4 Q. And that was one of the things you talked about  
5 yesterday, but weren't able to see?

6 A. Yes.

7 Q. I'd like to show you a copy of that so that you can  
8 identify it. For the record, it's OLS 310.

9 Ms. Lyew, I've handed you what's been marked for  
10 identification purposes -- and can you see the sticker on  
11 that page?

12 A. Yes, I do.

13 Q. What, what number does it have on there?

14 MR. YOUNG: Excuse me. Your Honor, Mr. Manning, I  
15 have no objection to the admission of this exhibit.

16 THE COURT: It's 16?

17 MR. MANNING: It's Defendant's 4.

18 THE COURT: All right.

19 And you have no objection? Is that what you've  
20 indicated?

21 MR. YOUNG: I have no objection, Your Honor.

22 THE COURT: Are you moving it, Mr. Manning?

23 MR. MANNING: Yes, Your Honor.

24 THE COURT: All right. Defendant's Exhibit 4 will  
25 be admitted into evidence without objection and can be

Sandra Lyew - Cross (Manning)

61

1 published at your discretion.

2 MR. MANNING: Thank you, Judge. I'd like to  
3 publish this so the jury can see it, please.

4 BY MR. MANNING:

5 Q. So, Ms. Lyew, on your screen you'll see the same thing  
6 that you have in hard copy form; correct?

7 A. Yes.

8 Q. All right. So at the top it says "universal data form,  
9 AUD correction indicator update." Do you see that?

10 A. Yes.

11 Q. Okay. So on this form -- let me start by asking you  
12 what is it and what is it about?

13 A. Again, this is a universal data form that is sent to  
14 all four bureaus. It's a factual report so that everyone --  
15 to confirm that all the credit reporting agencies are on the  
16 same page. Again, this is the coach sending it to its  
17 players.

18 Q. So the top piece is customer information and it  
19 identifies Mr. Daugherty with his property address; right?

20 A. Yes.

21 Q. Then you go to the account information and it has a  
22 variety of information there. Do you see the account  
23 number?

24 A. Yes.

25 Q. There's only one account number that Mr. Daugherty has

Sandra Lyew - Cross (Manning)

62

1 with Ocwen; right?

2 A. That is correct.

3 Q. You haven't seen any documents or any indication  
4 whatsoever that Ocwen ever furnished data twice to anybody?

5 A. No.

6 Q. The date open on this form is July 20th, 1999, which  
7 goes back to what we started with, the monthly data. That's  
8 the same date that Ocwen over a year ago had told Equifax,  
9 "Fix the opening date."

10 A. Correct.

11 Q. It gives a current balance. Do you see that?

12 A. Yes.

13 Q. And then amount past due. What's the amount past due  
14 there?

15 A. Zero.

16 Q. Then if we go towards the bottom you'll see the account  
17 history. And we've seen a number of versions of this, one  
18 on the monthly data, one on the ACDVs, and now on an AUD.  
19 Is that right?

20 A. Yes.

21 Q. And this is that pay history field that we had talked  
22 about; right?

23 A. Yes.

24 Q. Okay. What are the numbers that are appearing in those  
25 top two rows for the most recent 12-month periods?

Sandra Lyew - Cross (Manning)

63

- 1 A. Zero.
- 2 Q. What does zero indicate?
- 3 A. Current.
- 4 Q. When was this form created?
- 5 A. July 2nd, 2014.
- 6 Q. How do you know that?
- 7 A. It's indicated on the bottom left-hand corner.
- 8 Q. And that corresponds with what Mr. Hightower entered
- 9 into the comment log on July 2nd, 2014?
- 10 A. Yes. And above it identifies the AUD control number as
- 11 well to all four bureaus.
- 12 Q. Was this the first AUD control number?
- 13 A. No. There was one prior to this.
- 14 Q. And there was also some testimony about other Ocwen
- 15 ACDV responses. The earliest Ocwen has is April, 2014?
- 16 A. Yes.
- 17 Q. Why is that?
- 18 A. Ocwen did not archive -- save or archive prior to 2014.
- 19 That's when they began.
- 20 Q. What was the most current information that Ocwen had
- 21 available to it when Mr. Daugherty filed his lawsuit
- 22 regarding forms available on e-OSCAR?
- 23 A. Can you repeat that?
- 24 Q. Yeah, bad question. So yesterday you talked about the
- 25 e-OSCAR system and how data was only available for three

Sandra Lyew - Cross (Manning)

64

1 months on e-OSCAR.

2 A. Yes.

3 Q. So Mr. Daugherty filed his lawsuit on July 8th, 2014.

4 A. Yes.

5 Q. Three months prior to that would have been April?

6 A. Yes.

7 Q. What's the date of the earliest ACDV that Ocwen has?

8 A. April.

9 Q. Similarly, the prior AUD that Ocwen sent, the one  
10 before the July AUD that we're looking at now was in March,  
11 2014; right?

12 A. Correct.

13 Q. Does that explain why that one isn't available either?

14 A. Correct.

15 Q. Now, you still have Equifax documents in front of you.  
16 A number of times yesterday you pointed out that you're not  
17 in a position to interpret Equifax documents; right?

18 A. Correct.

19 Q. You never worked at Equifax?

20 A. No.

21 Q. You're not aware of what their policies and procedures  
22 are?

23 A. No.

24 Q. You're not an expert in credit reporting?

25 A. No.

Sandra Lyew - Cross (Manning)

65

1 Q. The issue is -- with those Equifax documents you can  
2 only identify the information that you can factually point  
3 out and correspond it to Ocwen's data?

4 A. Correct.

5 Q. So I'm going to take all that stuff away from you and I  
6 only have one more document.

7 Ms. Lyew, I've handed you what's been marked already as  
8 Plaintiff's Exhibit 10. I'd like to publish that to the  
9 jury. Do you see -- this document is on Ocwen letterhead.  
10 Can you identify the date and to whom it was sent?

11 A. The letter is dated February 5th, 2014, to David  
12 Daugherty at 35 Valley View Drive, Vienna, West Virginia,  
13 26105.

14 Q. What is this letter about?

15 A. This is regarding the balloon letter.

16 Q. Okay. What do you mean by balloon letter?

17 A. Okay. It's advising Mr. Daugherty that his loan is due  
18 to mature July 26th, 2014. And it also, it also states  
19 that -- it does state that it will not accept any mortgage  
20 payments beyond the maturity date.

21 Q. Well, we have looked at Defendant's 3, the transaction  
22 history earlier. And I thought you had told me that there  
23 was a payment that was accepted August 1st.

24 A. Yes. That was for the July 26th, 2014, payment.

25 Q. Okay. So that was accepted as a regular monthly

Sandra Lyew - Cross (Manning)

66

1 payment?

2 A. Yes, as the last payment.

3 Q. Now, after that, at that point the full balance on the  
4 loan became due?

5 A. Correct.

6 Q. And do you know what the full balance was when it  
7 became due?

8 A. It is 79,000 -- it's on that payment history.

9 Q. You may still have it in that binder.

10 A. No. You took everything.

11 Q. You're right. Sorry. By looking at Defendant's  
12 Exhibit 3, the payment history that we talked about earlier,  
13 can you tell me what was due at the time the balloon became  
14 mature?

15 A. \$79,198.72.

16 Q. After that became due are you aware of whether  
17 Mr. Daugherty ever attempted to make further payment?

18 A. Not since the last web payment on 8-1.

19 Q. Okay. So that -- the last time Mr. Daugherty tried to  
20 pay on the account was for that 8-1 regular payment?

21 A. Yes.

22 Q. When -- do you know when that 8-1 payment was actually  
23 sent in by Mr. Daugherty?

24 A. It was, it was received on 8-1.

25 Q. Okay. Then after that, how do you know Mr. Daugherty

1 never tried to pay anything ever again?

2 A. Well, I reviewed the comment log. The comment log  
3 doesn't identify the borrower sending in a payment or, or  
4 calling in with regards to trying to make a payment.

5 Q. If Mr. Daugherty had attempted to make any payment,  
6 would Ocwen have accepted it?

7 A. If Ocwen -- Ocwen would not accept any additional web  
8 payments or Speedpay payments. It would only -- it would  
9 accept if the borrower had mailed in a check.

10 Q. Okay. Would the check have to be in the full amount of  
11 the 80,000 he owed?

12 A. That, that's what is required.

13 Q. Okay. Was any such check ever received or attempted to  
14 be made?

15 A. No, no check for the full amount or a regular payment  
16 was received.

17 Q. Are you aware of how much is owed on that loan now?

18 A. Roughly 95,000 and change which includes additional  
19 fees and costs other than the principal balance.

20 Q. So it's been about, almost two full years at that full  
21 balance and it's now up to 95,000?

22 A. Approximately.

23 Q. Thank you.

24 THE COURT: Anything further of this witness,  
25 Mr. Young?

Sandra Lyew - Redirect (Young)

68

1 MR. YOUNG: I do, Your Honor.

2 THE COURT: Ladies and gentlemen, let me say to  
3 you that normally when one party calls a witness, as I told  
4 you in my opening instructions, the other party would  
5 cross-examine. And then the party that called would  
6 redirect the witness.

7 Here both of the parties wanted to call this witness.  
8 And, so, that's why you have seen somewhat of a different  
9 situation than you saw with the other witnesses.

10 Mr. Young.

11 MR. YOUNG: Thank you, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. YOUNG:

14 Q. Do you still have this white binder, ma'am?

15 A. Yes.

16 Q. Could you look at the very last page? I want to talk  
17 about the testimony that you just gave to the jury about  
18 whether or not Ocwen accepted my client's payment after the  
19 mortgage came due.

20 A. Okay.

21 Q. Look at the bottom line on the last page.

22 A. Yes.

23 Q. And Ocwen's records show that the payment for  
24 August 26th, 2014, was made on August 1st, 2014.

25 A. That's correct.

1 Q. So your previous testimony was incorrect because you  
2 testified that Ocwen did not accept this payment after the  
3 balloon came due. Is that right?

4 A. Yes. Well, yes, I said that, but the borrower --  
5 Mr. Daugherty never made a payment after the, after the 8-1  
6 payment was received and posted, applied. It was accepted.

7 Q. Right. But he was paying his August 26th payment.

8 A. No. That 8-1 was paying -- that paid for the  
9 July 26th, 2014, payment. He was -- if anything, the  
10 account would show due if the loan didn't mature for  
11 August 26th, 2014. Payments are paid in arrears.

12 Q. Doesn't the last line show a regular payment made on  
13 August 1st, 2014, that was applied to the August 26th,  
14 2014 --

15 A. No.

16 Q. -- balance? Would you, would you agree with me that  
17 Ocwen has a duty to conduct a reasonable investigation  
18 whenever it receives a dispute?

19 A. They're not obligated, but they do under -- for -- as a  
20 compliance. And they made it their policy and procedure to  
21 do so, and they have.

22 Q. Let me ask that again. As the designated corporate  
23 representative of Ocwen, is Ocwen required to do a  
24 reasonable investigation of a dispute?

25 A. They have.

Sandra Lyew - Redirect (Young)

70

1 Q. Are they required to or are they not required to?

2 A. Yes, but not limited -- in either which way, they have,  
3 they do for all disputes that do come in.

4 Q. So is the answer to my question, "Yes, Mr. Young"?

5 A. Yes.

6 Q. Ocwen is required to do a reasonable investigation?

7 A. Yes.

8 Q. Okay. And you would agree that this can't be a  
9 superficial investigation; correct?

10 MR. MANNING: Objection, calls for an opinion.

11 THE COURT: I overrule it, Mr. Manning. Again,  
12 given what she has indicated her position and her duties are  
13 and given her ability to answer the last question, I think  
14 it is a fair and appropriate question based on her response  
15 to the previous question as to the duty of conducting a  
16 reasonable investigation.

17 For those reasons, I overrule the objection, preserving  
18 Ocwen's objection and exception.

19 Go ahead, please.

20 THE WITNESS: Can you repeat the question, please?

21 BY MR. YOUNG:

22 Q. So Ocwen cannot just conduct a superficial  
23 investigation. It must conduct a reasonable investigation.  
24 Correct?

25 A. Can you be more specific with your "reasonable

Sandra Lyew - Redirect (Young)

71

1 investigation"? There's, there's two types of  
2 investigations in this case and they've, they've conducted  
3 reasonable and went beyond as far as advising all four  
4 bureaus with regards to their investigations on  
5 Mr. Daugherty's account.

6 Q. I don't think that was responsive. Let me ask it  
7 again. We've gotten by the hurdle. You've agreed that  
8 Ocwen had a duty to conduct a reasonable investigation.  
9 Correct?

10 A. Yes.

11 Q. And you would agree that a superficial investigation  
12 doesn't meet the standard of a reasonable investigation,  
13 does it?

14 A. Can you please be more specific in "superficial"?

15 Q. Do you understand the word "superficial"?

16 A. Yes, but you're not, you're not identifying to the  
17 invest-, reasonable investigation that you're, you're  
18 talking about.

19 Q. Well, based upon your understanding of the word  
20 "superficial," please answer my question.

21 A. Yes, they have.

22 Q. They have a duty to go, to go beyond just a superficial  
23 investigation. Is that your answer?

24 A. To what they're supposed to do and what they've  
25 conducted has been a superficial, a superficial, reasonable

Sandra Lyew - Redirect (Young)

72

1 investigation. And they went beyond by advising all four  
2 bureaus and responding to each.

3 Q. I don't know if you meant to say that, but what I heard  
4 you say is that Ocwen conducted a superficial, reasonable  
5 investigation. Was that your testimony?

6 A. They conducted their investigation to what they were  
7 supposed to do.

8 Q. Was it superficial or not?

9 A. I believe it was.

10 Q. So you believe it was a superficial investigation?

11 A. Yes.

12 Q. And would you agree that Ocwen must actually do a  
13 searching inquiry? They have to look at what's available  
14 every time an ACDV comes in in order to conduct a reasonable  
15 investigation.

16 A. Yes, based on the request that comes in. The request  
17 identifies the specific, to provide or confirm complete ID  
18 and verify certain information, yes. That's what they do.

19 Q. So would you agree with me that Ocwen has to do a  
20 searching inquiry of the information available in order to  
21 be, conduct a reasonable investigation?

22 MR. MANNING: Objection, asked and answered.

23 THE COURT: Well, quite frankly, I'm going to  
24 overrule it because I'm not convinced that this is redirect  
25 or cross, Mr. Manning, --

1 MR. MANNING: Okay.

2 THE COURT: -- given the posture of the two of you  
3 having called the witness. If you want to argue further, I  
4 will hear you.

5 MR. MANNING: Thank you.

6 THE COURT: All right.

7 THE WITNESS: Can you repeat the question, please?

8 MR. YOUNG: Let me just ask the court reporter to  
9 read it back if she could, please.

10 (The court reporter read back the previous question,  
11 after which the following occurred:)

12 THE WITNESS: Yes.

13 BY MR. YOUNG:

14 Q. And when an ACDV comes in, what defines the scope of  
15 the investigation?

16 A. The dispute code.

17 Q. So what Ocwen does is investigate the dispute code and  
18 nothing else; right?

19 A. That is correct.

20 Q. So it restricts its investigation to the dispute code  
21 assigned by the credit reporting agency; in this case,  
22 Equifax. Right?

23 A. That is correct.

24 Q. So Ocwen restricts its investigation to only the  
25 information provided by the credit reporting agency; right?

Sandra Lyew - Redirect (Young)

74

1 A. Can you rephrase your question, please? Can you ask  
2 that again?

3 Q. Well, let me -- Ocwen restricts its investigation to  
4 the dispute code assigned by the consumer reporting agency;  
5 in this case, Ocwen -- excuse me -- Equifax?

6 A. Ocwen conducts their investigation based on the, based  
7 on what is requested. Whatever the dispute code is, which  
8 is the request, that's the investigation that they will  
9 conduct. Any additional information it -- further research  
10 would be, come through a written response directly to Ocwen.

11 Q. Well, I think we're in agreement, but let me make sure.  
12 Ocwen restricts its investigation to the information  
13 provided by the consumer reporting agency, Equifax. So if  
14 they provide a dispute code, Ocwen restricts its  
15 investigation to the dispute code provided by Equifax;  
16 right?

17 A. Yes.

18 MR. MANNING: Objection to form.

19 THE COURT: Be more specific, Mr. Manning, when  
20 you say "form."

21 MR. MANNING: It's a vague and, and confusing  
22 question. I didn't understand it.

23 THE COURT: All right. Let's see if the witness  
24 did. I overrule it at this point. If she understood it, in  
25 other words, she can answer.

1 Go ahead, please.

2 THE WITNESS: Your question was Ocwen restricts by  
3 going beyond the dispute code request? Is that, is that --  
4 was that your question?

5 BY MR. YOUNG:

6 Q. Well, let me just --

7 A. Rephrase it.

8 MR. YOUNG: Let me ask the court reporter to read  
9 it back and see if we can't get a response.

10 (The court reporter read back the previous question,  
11 after which the following occurred:)

12 THE WITNESS: Then I rephrase that. So was that  
13 what you meant or --

14 BY MR. YOUNG:

15 Q. If you can, answer the question that the court reporter  
16 just read back.

17 A. I don't understand the question or your phrase.

18 Q. Let's back up again then. Ocwen restricts its  
19 investigation to the dispute code assigned by the credit  
20 reporting agency; in this case, Equifax. That is your  
21 testimony, isn't it?

22 A. They investigate strictly, as I mentioned yesterday and  
23 I'll say it again, based on the, based on the dispute code  
24 request.

25 Q. So when Equifax sends an ACDV, Ocwen restricts its

Sandra Lyew - Redirect (Young)

76

1 investigation to that code, dispute code assigned by Equifax  
2 and received by Ocwen; right?

3 A. Yes.

4 Q. You never worked in credit reporting, did you?

5 A. No.

6 Q. You never had the training to which you testified that  
7 these account analysts have; correct?

8 A. No, just general, just general training based on, based  
9 on my knowledge as far as my reviews for, for --

10 Q. You never had a one-month -- I didn't mean to interrupt  
11 you. I'm sorry. Go ahead.

12 A. No. Go ahead. I'm finished.

13 Q. You never had the one-month classroom training that the  
14 analysts receive that actually research and respond to the  
15 ACDVs. You haven't had that, have you?

16 A. No.

17 Q. And you haven't had the shadowing process either, have  
18 you?

19 A. I've had some shadowing.

20 Q. You haven't had the shadowing process that follows the  
21 one-month classroom training given to, given to credit  
22 analysts, have you?

23 A. No.

24 Q. And you've never investigated an ACDV, have you?

25 A. No.

Sandra Lyew - Redirect (Young)

1 Q. Let me hand you the third notice of deposition which  
2 was the notice of your deposition which was attached as  
3 Exhibit 1 to the deposition you gave to Mr. Nolan.

4 MR. MANNING: Objection, Judge, relevance.

5 THE COURT: Well, he's going to hand that to her  
6 and we'll see what the question is, counsel, before I make  
7 any ruling on relevance.

8 Go ahead, please.

9 MR. YOUNG: I've already marked the third notice  
10 of deposition amended as Plaintiff's Exhibit 29 and it is  
11 Document 83 in the court file in this matter.

12 BY MR. YOUNG:

13 Q. Is Exhibit -- what's the exhibit number?

14 A. 29.

15 Q. Is Exhibit 29 the notice of the deposition that you  
16 identified and was attached to your deposition testimony as  
17 Exhibit 1?

18 A. I believe so.

19 Q. And neither Mr. Daugherty, myself, or Mr. Nolan, we  
20 didn't designate you as the corporate representative of  
21 Ocwen, did we?

22 A. No.

23 Q. And you understood that when you gave that deposition  
24 you were speaking on behalf of Ocwen and that Ocwen was  
25 required to produce a witness that could address the various

Sandra Lyew - Redirect (Young)

78

1 items set forth in that notice of deposition; correct?

2 MR. MANNING: Objection, Judge. I've kind of let  
3 it go because you wanted to hear what the questions were.  
4 But the relevance about a deposition designation, it's just  
5 not relevant.

6 THE COURT: Well, I think it could have relevance  
7 depending on where this is going. In other words, those  
8 notices generally set out areas that people are expected to  
9 be able to testify on. I am assuming without knowing, like  
10 you, that this is where this is going. And, so, at this  
11 juncture, I overrule it. Do not let that prevent you from  
12 interjecting objections as we go forward.

13 BY MR. YOUNG:

14 Q. Do you see on the first page of the notice below the  
15 time and place where it states, "This corporate deponent --"  
16 or, "The corporate deponents must designate an individual or  
17 individuals to testify to the following matters." And then  
18 it lists several pages of detailed issues to which you were  
19 offered to give testimony.

20 A. Yes, I see it.

21 Q. Okay. And they start out with A and they end up with  
22 triple K on the last page.

23 A. Okay.

24 Q. And although you've never conducted an ACDV  
25 investigation or received any ACDV investigation training,

Sandra Lyew - Redirect (Young)

79

1 you're the person that Ocwen designated to come here to  
2 court and testify; correct?

3 A. That is correct.

4 Q. How many re-investigations of credit disputes are  
5 handled by Ocwen on an annual basis?

6 A. I don't know.

7 Q. Turn to Page 2 of the exhibit and look at the letter K.

8 A. Okay.

9 Q. And do you see now that you were designated by Ocwen to  
10 testify to the number of re-investigations of credit  
11 disputes on an annual basis?

12 A. I see that.

13 Q. Okay. But you can't testify to that, can you, because  
14 you don't know?

15 MR. MANNING: Objection, Judge. Again, the  
16 relevance. He's asking her about a deposition notice which  
17 was served long ago. And he can ask whatever questions he  
18 wants, but that -- this is an improper set of questions.

19 THE COURT: I overrule the objection, counsel.

20 Go ahead, please.

21 BY MR. YOUNG:

22 Q. Do the investigators, the analysts, do they have a  
23 quota or productivity targets when they're investigating  
24 these disputes?

25 A. That I, I have not heard of.

Sandra Lyew - Redirect (Young)

80

1 Q. And if you'll look at the second page of the deposition  
2 at the small letter M you were designated by Ocwen to give  
3 testimony on that issue, weren't you?

4 A. Yes.

5 Q. But you can't do it because you don't know anything  
6 about that?

7 A. I have not heard of any, any quota. And if you want to  
8 talk about productivity targets, they have to, they have,  
9 they have to conduct their work or, and/or disputes at a  
10 reasonable time frame, especially prior to any, any due  
11 dates that a response can be due.

12 Q. Do you have any knowledge of quotas that, as they  
13 relate to credit analysts?

14 A. If I have any knowledge with regards to -- I'm sorry?

15 Q. Do you have any knowledge with respect to quotas of  
16 credit analysts?

17 A. No.

18 Q. And you don't have any knowledge of any productivity  
19 targets for credit analysts, do you?

20 A. No.

21 MR. MANNING: Objection, Judge, relevance. He's  
22 asking about all these topics for something unrelated to  
23 trial. And there were a number of scope objections and  
24 those were not resolved.

25 I mean, there were objections made to these topics

Sandra Lyew - Redirect (Young)

81

1 which I understand from the legal process Your Honor and I  
2 can discuss with Mr. Young. It's a separate process. It's  
3 not something that you can go through the topics and just  
4 say, "You were supposed to know everything," when there's  
5 timely served objections.

6 MR. YOUNG: Judge, the speaking objections at this  
7 point -- I'm merely referring to a 30(b)(6) notice of  
8 deposition.

9 THE COURT: Do you have a response to his  
10 objection, Mr. Young?

11 MR. YOUNG: Yes, Your Honor. This witness was  
12 designated to speak on these topics by notice. The only  
13 person produced was this witness. And that's what I'm  
14 attempting to show is that the witness really has no  
15 knowledge of the issues before the jury.

16 THE COURT: The last question, as I understood it,  
17 that you asked her about having been designated had to do  
18 with production. Did I understand that correctly or not?

19 MR. YOUNG: Yes, Your Honor. The precise words  
20 were "productivity targets" which is verbatim from topic M  
21 in the notice of deposition.

22 THE COURT: All right. And its relevance as it  
23 relates to the issues here before the jury is what from your  
24 perspective, Mr. Young?

25 MR. YOUNG: Well, we believe one view of the

Sandra Lyew - Redirect (Young)

82

1 evidence is that these investigations were rather brief.  
2 And, hence, whether these investigators had quotas or  
3 productivity targets would seem to be relevant.

4 THE COURT: All right. I overrule the objection,  
5 Mr. Manning.

6 Go ahead.

7 MR. MANNING: Judge, if I may make a clarification  
8 point in response to what he just said.

9 THE COURT: I've overruled the objection but,  
10 again, will let you address the record at a break if you  
11 want to.

12 Go ahead, please.

13 BY MR. YOUNG:

14 Q. You do not have any knowledge of productivity targets  
15 for credit analysts, do you?

16 A. Again, no.

17 MR. YOUNG: I move for the introduction of  
18 Plaintiff's Exhibit 24 at this time and I do not wish to  
19 publish it at this time.

20 THE COURT: Is that the designation?

21 MR. YOUNG: That, Your Honor, is the 30(b)(6)  
22 notice of deposition which was an exhibit.

23 THE COURT: All right.

24 And you object to it, Mr. Manning, for the reasons  
25 you've previously stated?

1 MR. MANNING: And additional reasons.

2 First, relevance; second, what Mr. Young hasn't said is  
3 that there were timely served objections. And that  
4 deposition that he's referring to was conducted by agreement  
5 with them subject to the objections. Third, it's improper  
6 impeachment.

7 THE COURT: All right. I don't construe it to be  
8 impeachment, but I will hear you all at a break before  
9 ruling on the admissibility of the document regarding the  
10 agreement that you indicate that the parties reached. So I  
11 will withhold ruling on the admissibility of that document  
12 pending my hearing you all at a recess.

13 Go ahead, please, Mr. Young.

14 MR. YOUNG: Thank you. May I hand the witness  
15 Plaintiff's Exhibit 28?

16 THE COURT: Yes, sir.

17 MR. YOUNG: This exhibit has already been  
18 admitted.

19 THE COURT: The clerk does not show it as having  
20 been admitted, counsel.

21 MR. YOUNG: Oh, I'm sorry. It's admitted by  
22 agreement of counsel, Your Honor.

23 MR. MANNING: This is the demonstrative. Yes, I  
24 don't have an objection, Your Honor.

25 MR. YOUNG: I'm sorry.

1                   THE COURT: Plaintiff's Exhibit 28 will be  
2 admitted into evidence without objection and can be  
3 published.

4 BY MR. YOUNG:

5 Q. Okay. The -- so you understand what we're seeing here,  
6 the yellow column, those are all the Equifax exhibits that  
7 were admitted as Plaintiff's Exhibits 11 through 23.

8                   And if you look over to the next column, if you would,  
9 please, and you'll see the pink column. Those are  
10 Plaintiff's 27.

11                  And the orange column, that's Plaintiff's 26 which is  
12 that white binder full of notes. I just do that for you to  
13 orient yourself.

14                  And Numbers 1 through 14 show 14 separate Equifax ACDVs  
15 in the yellow column. And I'm showing that where my marker  
16 there ends on March 23rd, '14, with item number 14.

17                  If you focus on that, the next column is blank. And  
18 that's because we don't have the ACDV because Ocwen didn't  
19 keep them. Is that fair?

20 A. Correct.

21 Q. Now, Ocwen, if it wants to know about Mr. Daugherty's  
22 loan, it can go back in time 15 years and pull up the actual  
23 deed of trust and mortgage agreement, can't it?

24 A. For the note -- to pull up the note and mortgage.

25 Q. Yes.

1 A. Yes.

2 Q. So with the click of a button it can see everything  
3 that's happened in the last 15 years with respect to this  
4 mortgage, can't it?

5 A. A click of a button is kind of a little -- it takes  
6 more than a click, but, yes.

7 Q. Well, weren't these, weren't these analysts looking at  
8 this EIS file and confirming that he signed this note 15  
9 years ago?

10 A. The CIS, yes.

11 Q. So the analysts were able to look back 15 years and see  
12 that he signed the note; right?

13 A. Yes. That is a separate repository that they would  
14 have to get into. That is not in the REALServicing system.

15 Q. But it's readily accessible to the credit analysts;  
16 right?

17 A. Yes.

18 Q. And Plaintiff's Exhibit 26, this binder, if you want to  
19 know anything that happened with respect to Mr. Daugherty's  
20 note, these notes start August 15th, 2011. So clear back to  
21 October -- clear back to October of 2011 Ocwen has notes of  
22 everything that happened; right?

23 A. Ocwen has notes. And should they need additional  
24 information, they go directly to the department that, that  
25 handles, that would handle that concern.

1 Q. So its notes go back to 2011. And in some respects  
2 they go -- it's able to go back 15 years. And if someone --  
3 if a consumer such as Mr. Daugherty wants to challenge  
4 whether or not Ocwen conducted a reasonable investigation of  
5 a dispute, Ocwen can only back, go back three months and  
6 produce ACDV data. Is that right?

7 A. From 1 to 14? We're still on 1 to 14; right? Correct?

8 Q. Well, I mean, I left it up there. But the question was  
9 if someone like Mr. Daugherty makes a claim that Ocwen  
10 wasn't reasonable in investigating an ACDV, Ocwen somehow  
11 can only go back three months; is that right?

12 A. E-OSCAR goes back three months.

13 Q. Now, Equifax didn't have any problem going clear back  
14 to March 20th, 2013, and bringing up these records. We've  
15 looked at them, haven't we?

16 A. Okay.

17 Q. But Ocwen can't do that, can it?

18 A. To provide their ACDV, no.

19 Q. So we have to rely on the notes in this orange column;  
20 right?

21 A. Yes.

22 Q. And all we know and all anyone can testify to now  
23 because after three months the records are gone, all we have  
24 is this white notebook; correct?

25 A. Yes.

Sandra Lyew - Redirect (Young)

87

1 Q. Okay. But fortunately the white notebook correlates  
2 and mentions by the green column, the last four digits of  
3 the control number, fortunately we can take the history  
4 notes, we can take the Equifax ACDV, and we can try to piece  
5 together what happened because we don't have the Ocwen  
6 records because they aren't available anymore. Is that  
7 right? That's all we can do?

8 A. Correct.

9 Q. And the only records we have about an investigation,  
10 what happened and how long it took is this white notebook of  
11 Ocwen notes; correct?

12 A. I, I have to disagree on that one.

13 Q. What do you disagree with?

14 A. As far as the timing. You mentioned timing and I have  
15 to disagree on the timing part. But, again, as I mentioned  
16 earlier, those are the -- those codes are entered into the  
17 system after the research has been conducted.

18 Q. Okay. Well, that's where I want to go because if we  
19 look at the white notes, this white notebook full of notes,  
20 it appears on the face of these notes that the dispute was  
21 received and dispatched within a very short period of time;  
22 correct? If we only look at the notes; right?

23 A. If you go by the notes, I suppose.

24 Q. Okay. But your testimony is that, oh, no, there was  
25 all this research done by the credit analysts. And after

1       they did all their research, then they made the entry  
2       "dispute received."   Correct?

3       A.    Yes.

4       Q.    And then when they sent the ACDV back, they made the  
5       entry "form sent electronically."   Right?

6       A.    Yes.

7       Q.    So -- and if that happened to be five seconds or seven  
8       seconds or 12 seconds, that doesn't really reflect the  
9       length of the investigation, does it?   Is that your  
10      testimony?

11      A.    If you're going by the time of the entries in the  
12      notebook, I already told you what the policy, what the  
13      procedure was for conducting a dispute, that they have to  
14      conduct the research.   But, no, it does not take five  
15      seconds.   It doesn't even take five seconds to log into the  
16      com-, into REALServicing.

17      Q.    Well, I'm not sure you answered my question at all.  
18      All I was trying to establish is that it's your position  
19      that these time stamps don't really reflect the length of  
20      the investigation.   Isn't that your testimony?

21      A.    That is correct.

22      Q.    So before the time stamp, the first time stamp is ever  
23      made when it says "dispute received," that really doesn't  
24      mean dispute received.   It means that the dispute had been  
25      received sometime earlier and then all this investigation

1 was done and then Mr. Rajani or Mr. Rao, whoever it was,  
2 then they made the time stamped entry "dispute received."  
3 Correct?

4 A. Yes.

5 Q. And then when they sent the response, they made the  
6 time stamp entry "response sent electronically." Correct?

7 A. After they entered the received code.

8 Q. Is there any other record maintained by Ocwen which  
9 would indicate when it received an ACDV other than the  
10 entries in this note log?

11 A. No.

12 Q. Is there any record maintained by Ocwen of the nature,  
13 extent, and duration of the investigation conducted by a  
14 credit analyst other than appears in this exhibit of the  
15 white notebook?

16 A. No.

17 Q. Well, let's look at the notes that are admitted into  
18 evidence. And I'll just grab one at random. And I'm  
19 looking at Page 1695 of the white notebook if that would be  
20 easier for you. Are you -- down on the screen I have this  
21 highlighted 0123 and it is on that Page 1695. That's a --  
22 that's an ACDV control number, isn't it?

23 A. You said 1695?

24 Q. Right. On the screen is --

25 A. Okay.

Sandra Lyew - Redirect (Young)

90

1 Q. -- 1695.

2 A. Yes.

3 Q. Are you there?

4 A. Yes.

5 Q. And you see on the screen I highlighted that 0123.

6 That's a control number of an ACDV that came in; --

7 A. Yes.

8 Q. -- right? And if you go to the next page, we see that  
9 it is now resolved; that the information on the ACDV was  
10 verified. Right?

11 A. Yes.

12 Q. And although it appears that it was resolved on  
13 11:54:38 seconds by SV Akshatha, and although it appears the  
14 investigation just started seconds before that, you're  
15 telling me that this does not really reflect what this  
16 analyst did. These time stamps don't reflect the actual  
17 duration of the investigation. That's your testimony.

18 Right?

19 A. Yes.

20 Q. Okay. So before this entry is ever made, this  
21 particular analyst has already received the dispute, done a  
22 thorough investigation, and then logged onto the system to  
23 show that the, that the dispute was received. Correct?

24 A. They research. They respond back to the, through  
25 e-OSCAR to the CRA, then enter --

Sandra Lyew - Redirect (Young)

91

1 Q. So although this document only appears to show a few  
2 seconds, you're saying that before the, before the credit  
3 analyst ever logged on, they had done this reasonable  
4 investigation. Then they logged on and that's why we only  
5 see a few seconds involved in each investigation. Is that  
6 fair?

7 A. The research is conducted before the entry --  
8 unfortunately before the entry of showing being received  
9 and, and completed into the notes. So the research -- the  
10 system -- you're confusing the five seconds. It takes  
11 longer to log in than five seconds.

12 But it -- they conduct the research, whether it's  
13 through the REALServicing system, the, the Vault, or if  
14 they, there is some note stating that they've even went to  
15 Radar which was Litton's old system and did what they -- and  
16 conducted a research there before entering the "received and  
17 complete."

18 Everything is researched and sent to the credit  
19 reporting agencies before the, before these entries are  
20 made.

21 Q. Well, I'm not trying to confuse anything. I'm just  
22 trying to make sure that we understand your testimony. And,  
23 that is, that these time stamps don't reflect the length of  
24 the investigation, do they?

25 A. No.

1 Q. That's your testimony?

2 A. Yes.

3 Q. But there are no other records which would show the  
4 length of investigation; right?

5 A. No.

6 Q. But before SV Akshatha logged on, she had already done  
7 an investigation, logged on, said that the dispute had been  
8 received and then a few seconds later electronically sent  
9 out the response; correct? That's what really happened?

10 A. Can you repeat that, please?

11 Q. I'm trying to agree with you here. Isn't it your  
12 testimony that despite the fact that it only shows a few  
13 seconds on the logs between when the dispute was received  
14 and resolved, what really happened was that there was an  
15 extensive investigation in this case by Ms. Akshatha before  
16 she logged on with the time stamp?

17 A. You mean entered the code?

18 Q. Before she -- no. Let's use logged on. Before she  
19 logged on and said "dispute received," she had already done  
20 her investigation; right?

21 A. E-OSCAR is a separate system. The -- she's already  
22 logged on, if anything, into the system because  
23 REALServicing is part of her research, or his research.

24 Q. But according to the notes, the notes say "ACDV  
25 received" and they have a time and a date. And you're

Sandra Lyew - Redirect (Young)

93

1 telling the jury that that's not the real time and date that  
2 the ACDV was received. It was actually received before that  
3 and fully investigated. And then the analyst logs on and  
4 puts a time stamp next to "ACDV received." Do you follow me  
5 so far? Is that your testimony?

6 A. Without the log-on, yes.

7 Q. Well, what would you rather me say than log-on?

8 A. Before entering the codes into the system. Again,  
9 REALServicing is part of their research on the dispute that  
10 is received from e-OSCAR.

11 Q. Okay. So on the one we're talking about, 0123, even  
12 though the record only shows a few seconds between the  
13 dispute coming in and the response going out, there was much  
14 more time spent investigating. We just don't have those  
15 records. Fair?

16 A. Fair.

17 THE COURT: How much longer, Mr. Young?

18 MR. YOUNG: May I just finish this one line, Your  
19 Honor?

20 THE COURT: Yes, sir.

21 BY MR. YOUNG:

22 Q. Okay. Look at 1696.

23 A. I'm there.

24 Q. Now, you see 0123. It's been resolved. Right?

25 A. Yes.

Sandra Lyew - Redirect (Young)

94

1 Q. Okay. And it was resolved at 11:54:40; right? That's  
2 when the electronic report went back; correct?

3 A. Based on the notes in the system, this is what you're  
4 referring to.

5 Q. Okay. Well, but that note is accurate when the ACDV  
6 was -- when the investigation was completed and the ACDV was  
7 sent back to Equifax. You don't have a problem with that  
8 time stamp, do you? That's when it was done and sent  
9 electronically as the record says; right?

10 A. Okay.

11 Q. But Ms. Akshatha seconds later got another ACDV, didn't  
12 she, 0122; right?

13 A. I see it.

14 Q. So seconds after the first response was gone, another  
15 one came in, "automated borrower, automated CDV." That came  
16 in at 11:54:44; right?

17 A. That's -- that was entered.

18 Q. It was entered. And then the investigation was  
19 complete and it was verified in a matter of just a few  
20 seconds; right?

21 A. Sure.

22 Q. Okay. Well, but between the report going out, the  
23 first one going out and her note of the second one, just a  
24 few seconds have elapsed; right?

25 A. Sure, Mr. Young, if you -- again, if you're going by

1 dates and time stamps and codes, yeah.

2 Q. But if only a few seconds elapsed between when  
3 Ms. Akshatha was finished with the first ACDV and sent out  
4 the response to the second ACDV, when did she have time to  
5 do this extensive investigation of this second ACDV?

6 A. It could have been -- you want an assumption? Again,  
7 all the -- every, everything that's assigned to them, to the  
8 associates are, are -- they conduct their work before  
9 entering it into the REALServicing system.

10 Q. But all we know is what was entered on this form and  
11 the times that were logged on this form; right?

12 A. Sure.

13 MR. YOUNG: I'm finished with that line, Your  
14 Honor.

15 THE COURT: All right.

16 Ladies and gentlemen, I'll give you your luncheon  
17 recess. While you're out, do not discuss this case among  
18 yourselves or permit anyone to discuss it with you or in  
19 your presence. And please be in your jury lounge at 1:30.

20 We'll stand in recess.

21 (Recess taken from 12:07 p.m. until 1:30 p.m.)

22 THE COURT: Good afternoon, everyone.

23 Mr. Young.

24 MR. YOUNG: Thank you, Your Honor.

25 BY MR. YOUNG:

1 Q. You understand that one of my client's complaints is  
2 that he had to refinance a balloon mortgage and at least his  
3 claim is that the credit reporting interfered with that  
4 process. You understand that's the issue in this case,  
5 don't you?

6 A. I understand that, but we don't have control on how the  
7 credit bureau reports.

8 Q. And you were designated as Ocwen's spokesman for all  
9 things relating to my client in August of 2015. And you  
10 gave a deposition to Mr. Nolan. Is that right?

11 A. Yes.

12 Q. And when you gave that deposition, you really didn't  
13 know anything about this case, Mr. Daugherty, and the  
14 issues, did you?

15 A. That's inaccurate. That's not true. I did.

16 Q. You didn't even know that there was a balloon note, did  
17 you?

18 A. That's not true.

19 Q. Did you testify, "I believe this is a fixed rate  
20 mortgage and not a balloon"?

21 A. It is a fixed rate but it has a maturity date.

22 Q. Did you testify, "I believe this is a fixed rate  
23 mortgage and not a balloon"?

24 A. It is a fixed rate of 9.75 from the origination to the  
25 maturity date.

1 Q. Did you testify, "I believe this is a fixed rate  
2 mortgage and not a balloon"?

3 A. I don't recall.

4 Q. Okay. Let me show you the testimony I'm referring to.  
5 Does that refresh your memory?

6 A. Okay. That's what the deposition says. However, it is  
7 a fixed --

8 Q. First --

9 THE COURT: Just a second.

10 BY MR. YOUNG:

11 Q. First, answer my question now that you've had the  
12 chance to refresh your memory. Was my statement true that  
13 that's what you testified to at your deposition?

14 A. I said it's not a balloon, so we spoke about this  
15 account. It reports -- it's based on a note. So it is a  
16 fixed -- it wasn't an adjustable balloon. It was a fixed  
17 rate balloon.

18 Q. Please answer my question. Was the statement I read  
19 from that deposition that's before you now, that's what you  
20 actually said, isn't it?

21 A. And I also said that this information is regards to the  
22 actual mortgage, whether it was a fixed rate, adjustable  
23 rate, balloon, there is a maturity date.

24 Q. Is the answer to my question, "Yes, Mr. Young, those  
25 are the exact words I said at your deposition"?

1 A. Those are -- that's part, that's part of my answer.

2 Q. Okay. Now, you read to the jury those exact words at  
3 your deposition, please.

4 A. I just read it. I just read it to you.

5 Q. I want you to read that phrase that I just pointed out  
6 to the jury from your sworn testimony.

7 A. "But this is not a balloon, so we speak -- so we can  
8 speak about this account. So how it, it reports is based on  
9 the note. This information in regards to the actual  
10 mortgage, whether it is an adjustable rate, fixed rate,  
11 balloon, there is a maturity date."

12 Q. May I have the deposition back, please? Your exact  
13 words were, "I believe this is a fixed rate mortgage and not  
14 a balloon." Correct?

15 A. I said but it's -- are we reading the same response?  
16 Because I just read a response that I made.

17 Q. See here where it says "the witness"? Does it say, "I  
18 believe this is a fixed rate mortgage and not a balloon,"  
19 period?

20 A. And I also -- okay. That says that. And I also read  
21 the response that I, I answered below it.

22 Q. Fair enough. Then Mr. Nolan asked you another  
23 question; right? And he said, "If it was a balloon, would  
24 Ocwen be required to record something in that box?" And  
25 again you replied, "But it's not a balloon." Correct?

1 A. Okay.

2 Q. And then Mr. Nolan asked you, "So if I had a  
3 hypothetical where there was a balloon due, would it be  
4 inaccurate to leave that box blank?"

5 And didn't you reply, "If there is a balloon amount, I  
6 don't know how, how they would, how it's completed."

7 And before you answer, you can refresh your memory by  
8 looking at your testimony.

9 (Pause)

10 BY MR. YOUNG:

11 Q. Having had the opportunity to look at your sworn  
12 testimony, did I fairly characterize the question and the  
13 answers given on that page?

14 A. Okay.

15 Q. So the answer is, yes, I fairly characterized the  
16 testimony given on that date?

17 A. I read the, I read the testimony that's on, that's  
18 stated in the deposition.

19 Q. And did I fairly characterize it when I represented  
20 what happened?

21 A. You can characterize it any how you would like.  
22 This -- based on what I read, this is my deposition and it  
23 was a fixed rate balloon, okay. That was my mistake.

24 Q. Was I fair or unfair when I characterized your  
25 testimony that you have before you?

Sandra Lyew - Redirect (Young)

100

1 A. I read the response. I, I acknowledged that this is  
2 what the deposition says.

3 Q. So is the answer to my question, "Yes, Mr. Young, you  
4 fairly represented what is shown in my deposition"? Is that  
5 right?

6 A. Yes, Mr. Young.

7 Q. Thank you. Let me take that back, please.

8 A. You might want to leave a copy here so that you don't  
9 have to walk back and forth.

10 Q. I appreciate that, but I'd like this back.

11 A. Okay.

12 Q. If you need it again, you just ask me and I'll bring it  
13 up here.

14 THE COURT: Let's get back to the questioning,  
15 ma'am. Wait for a question, please.

16 BY MR. YOUNG:

17 Q. Counsel -- Mr. Manning covered with you some of the  
18 ACDVs which I've been referring to as Ocwen's copies, but I  
19 think you called them the actual e-OSCAR system.

20 MR. YOUNG: These -- the auto focus does not seem  
21 to be working. I'll try once more. Could I have Exhibit  
22 27, please, the red binder? May I hand the witness Exhibit  
23 27, Your Honor?

24 THE COURT: Yes, sir.

25 BY MR. YOUNG:

1 Q. Could you turn to the document marked 1351 within the  
2 red binder before you? Are you there?

3 A. Yes.

4 Q. And this is the June 16 ACDV response of Ocwen authored  
5 by Mr. Raj Kumar; is that right?

6 A. Yes.

7 Q. It has to do with the ACDV 8126; correct?

8 A. Yes.

9 Q. And Mr. Raj Kumar's name is right below that control  
10 number; right?

11 A. Yes.

12 Q. And I believe when Mr. Manning went over this document  
13 with you, he went over the account information at the bottom  
14 of that same page showing the code 11 account status.

15 A. No, he went over June 20th, 2014.

16 Q. I have it -- I have the wrong document. I apologize.  
17 Were there -- there were two -- could you turn to the  
18 document that he went over and tell me the one that has that  
19 date on it?

20 A. Control number 1128.

21 Q. And what was the --

22 A. And control number -- actually, I'm sorry. It's 1129.  
23 I have it highlighted here.

24 Q. Okay. Does 1128, does it precede that?

25 A. They're both completed on the same day.

1 Q. Do you have page 1351 there?

2 A. Yes.

3 Q. And that's the dispute I just had up on the screen  
4 ending in 8128; correct?

5 A. Yes.

6 Q. Okay. And looking at the 8128 dispute code, Raj Kumar  
7 verified that the account was current and that my client was  
8 paying as agreed; correct?

9 A. No. Raj Kumar verified "not his --" based on the  
10 dispute code, "provide or confirm complete ID."

11 Q. And what was -- the first document that you referred me  
12 to was 0129?

13 A. No. Which document are you speaking about?

14 Q. Let's look at 1353. And, again, it's Raj Kumar, isn't  
15 it?

16 A. Yes.

17 Q. And, again, this one shows past the due date and pays  
18 five or more days -- five or more payments past due. Right?

19 A. That is Equifax's request data, the dispute code 1,  
20 requested to provide or confirm complete ID.

21 Q. Did Ocwen respond to data transmitted over by Equifax  
22 which showed the account 120 days past due and five or more  
23 payments behind?

24 A. No.

25 Q. And if Ocwen doesn't respond or change that data and

1 sends this back, "account information accurate as of date,"  
2 then this information remains on my client's credit, doesn't  
3 it?

4 A. The dispute code requests to provide or confirm  
5 complete ID. And this -- that is what was completed on this  
6 form.

7 Q. And we get back to the very beginning of my redirect  
8 then. And, that is, it's Ocwen's policy not to look beyond  
9 the dispute code, to just look at the dispute code and  
10 confirm or modify based on the dispute code; right?

11 A. That was my response.

12 Q. So Ocwen restricts its investigation to the information  
13 provided by Equifax in this particular case that we just  
14 looked at?

15 A. Equifax is -- if Equifax detailed their dispute codes,  
16 then it was detailed, that's what was, that's what would be  
17 verified. In this case, they, they asked to, for Ocwen to  
18 provide or confirm a complete ID.

19 Q. Then --

20 A. Then it falls back to 6-14 -- 6-20 when the request  
21 from Equifax came in to verify payment history profile,  
22 account status, and payment rating. And that's the  
23 investigation that was complete, the response to the CRA,  
24 Equifax.

25 MR. YOUNG: Could the court reporter repeat my

Sandra Lyew - Redirect (Young)

104

1 last, read back my last question, please?

2 (The court reporter read back the previous question,  
3 after which the following occurred:)

4 THE WITNESS: Ocwen provides an investigation  
5 based on what is asked. In this case, it was asked to  
6 provide or confirm a complete ID and that's what was done.

7 BY MR. YOUNG:

8 Q. Okay. So I guess more fairly Equifax -- I mean, Ocwen  
9 restricts its investigation to the dispute code provided by  
10 Equifax; correct?

11 MR. MANNING: Objection, asked and answered.

12 THE COURT: Overruled.

13 MR. MANNING: She's answered these questions a  
14 number of times, Judge.

15 THE COURT: Overruled, Mr. Manning.

16 THE WITNESS: It conducts the investigation based  
17 on what is asked.

18 BY MR. YOUNG:

19 Q. And it conducts its investigation based upon the  
20 dispute code and nothing else; correct?

21 A. Correct.

22 Q. Based upon your review of the records, did Ocwen do  
23 anything wrong with respect to responding to the 24 ACDVs?

24 MR. MANNING: Objection, calls for an opinion.

25 THE COURT: Overruled. Again, given her

1       testimony, given her position with the company and the  
2       duties that she's indicated, for those reasons, Mr. Manning,  
3       I overrule your objection.

4                  THE WITNESS: Yes.

5 BY MR. YOUNG:

6 Q. Yes, Ocwen did things wrong?

7 A. No, they did not.

8 Q. Okay. Let me ask the question again. Did Ocwen do  
9 anything wrong in this entire process of responding to 24  
10 ACDVs that we've looked at?

11 A. No, not that I can recall.

12 Q. So your testimony is Ocwen did nothing wrong with  
13 respect to the entire process of receiving and responding to  
14 the 24 ACDVs; correct?

15 A. I feel that they did nothing wrong.

16                  MR. YOUNG: Your Honor, no further questions of  
17 the witness and I would like to approach about a matter.

18                  THE COURT: All right. Mr. Manning.

19                  THE WITNESS: Can I step down?

20                  (Bench conference on the record)

21                  MR. YOUNG: Your Honor, at the beginning I made an  
22 objection about this witness testifying to training. And I  
23 reviewed the deposition --

24                  THE COURT: You're not at the bench chewing gum,  
25 are you, Mr. Manning?

1 MR. MANNING: I'm sorry?

2 THE COURT: You're not at the bench chewing gum,  
3 are you?

4 MR. MANNING: No, ma'am.

5 THE COURT: Go ahead, counsel.

6 MR. YOUNG: I've reviewed the testimony and I  
7 think 137 and 138 is where the witness testified about  
8 training at the deposition. And her testimony is about  
9 identical to what she testified here today.

10 Then later in the deposition she was asked, "You  
11 discussed policies and procedures and training. Are these  
12 written down somewhere at Ocwen?"

13 The answer is, "Yes."

14 "Can you all --" this is Mr. Nolan. "Can you all  
15 provide to us, provide those to us so we can review them  
16 pursuant to our discovery request? I believe we requested  
17 that."

18 And Mr. Manning replied, "I'll make a note of that."

19 In light of that, Your Honor, I'd ask the Court to  
20 instruct the jury to disregard the witness's testimony about  
21 the, about the policies, the training policies and  
22 procedures.

23 Moreover, when I examined this witness she testified  
24 that she did not undergo such training. She did not undergo  
25 the one-week or the one-month training course. She did not

1 undergo the shadowing. And, so, really there's no basis for  
2 her to testify to this at all. That's separate and apart  
3 from asking for these written policies and counsel  
4 indicating that he would provide those.

5 THE COURT: Mr. Manning, I'll let you respond.  
6 But as to the latter issue, I believe that that is an issue  
7 that goes to the weight of her testimony with the jury, the  
8 fact that she herself has not received any training or  
9 shadowing. And as you've indicated, it's a separate issue  
10 from whether or not there was disclosure of policies and  
11 manuals that were provided.

12 So as to the latter issue, that does not cause me to  
13 exclude any testimony. I think that's an issue that bears  
14 on the weight that the jury will give to the witness's  
15 testimony.

16 MR. YOUNG: Thank you, Your Honor.

17 THE COURT: Preserving your objection and  
18 exception for not excluding if that's what you're asking on  
19 that basis.

20 That limits it to the disclosure of the policies, Mr.  
21 Manning. Response?

22 MR. MANNING: Yes, Judge.

23 Your Honor, we discussed this previously about how she  
24 testified at length in the deposition. Mr. Young is not  
25 disputing that. And I -- if Your Honor would like, I have

1 those sections enumerated if you'd like to see them. But  
2 there's lengthy testimony that was disclosed at her  
3 deposition over a year ago --

4 THE COURT: Uh-huh.

5 MR. MANNING: -- about the training, about the  
6 policies, and about the procedures. And, therefore, as Your  
7 Honor indicated, there's no notice issue. And it was  
8 disclosed, so there's no valid objection to them.

9 THE COURT: I'm happy to review the deposition  
10 testimony before making a final ruling on this.

11 But the other thing that I would say, Mr. Young, is  
12 that in her testimony here today in front of the jury there  
13 has not been extensive testimony, in my opinion, regarding  
14 training procedures and policies. And if you want to point  
15 to me -- if you want to disagree with that, I certainly want  
16 you to be able to do that.

17 But, in other words, in order to exclude it for the  
18 jury there should be testimony specifically that you're  
19 asking me to exclude because these were not revealed or  
20 disclosed as requested.

21 I do not recall in listening to your examination of her  
22 getting into any lengthy or detailed testimony regarding  
23 training procedures other than the fact that she did not  
24 receive certain training which, again, I think is up to the  
25 jury to bear on the weight of the testimony that she has

1 given.

2 MR. YOUNG: Judge, I'm going to withdraw any  
3 objection I have and just move on with the case. I don't  
4 want to submit anything else.

5 THE COURT: You're tired of hearing from me,  
6 aren't you, Mr. Young?

7 MR. YOUNG: Excuse me?

8 THE COURT: You're tired of hearing from the  
9 Court, aren't you?

10 MR. YOUNG: No, I'm not and I do -- Judge, when I  
11 listen intently, I do so with my eyes closed, and I tell the  
12 preacher that all the time. Sometimes when you're ruling  
13 I'm --

14 THE COURT: I'm not offended by that.

15 MR. YOUNG: Okay. I just wanted to make sure.

16 THE COURT: The objection has been withdrawn, Mr.  
17 Manning.

18 MR. MANNING: Thank you, Judge.

19 (Bench conference concluded)

20 THE COURT: Mr. Young, you're done?

21 MR. YOUNG: I'm done with this witness, Your  
22 Honor. We're ready to call our next witness.

23 THE COURT: Mr. Manning, anything further?

24 MR. MANNING: Yes, Judge. I'll be brief.

25 RECROSS EXAMINATION

Sandra Lyew - Recross (Manning)

110

1 BY MR. MANNING:

2 Q. Ms. Lyew, you took the stand before lunch yesterday;  
3 right? Is that right?

4 A. Yes.

5 Q. So you've been at this for more than a day, almost a  
6 day and a half, and I'm going to keep this real brief.

7         During Mr. Young's testimony -- I'm sorry -- his  
8 questions, there were a lot of questions. And at one point  
9 you said something about superficial. What does the word  
10 "superficial" mean to you?

11 A. It could mean a number of things.

12 Q. Well, and I know that you weren't given the opportunity  
13 to explain yourself. My question to you is at one point you  
14 were saying there was reasonable investigation.

15 "Superficial" in the, just the dictionary definition of  
16 Merriam-Webster says not --

17             MR. YOUNG: Objection, Your Honor.

18             MR. MANNING: -- not complete.

19             THE COURT: Just a second. There's an objection  
20 on the floor.

21             Mr. Young, basis?

22             MR. YOUNG: It's leading. He's reading a  
23 dictionary, trying to read a dictionary definition to have  
24 this witness agree with it to attempt, I think, to change  
25 her previous testimony.

Sandra Lyew - Recross (Manning)

111

1                   THE COURT: Well, I overrule the objection. This  
2 witness was asked during your examination if she understood  
3 the meaning of the word. She indicated that she did. She  
4 then gave an answer to a question with the word in it which  
5 the jury will recall.

6                   Now she is being examined on what I believe Mr. Manning  
7 is trying to get at his, whether -- when she said that, what  
8 her understanding of the meaning of the word was. And I  
9 think that's appropriate. I'm going to permit it and let  
10 the jury give it the weight it believes it's entitled to  
11 receive, preserving the plaintiff's objection and exception.

12 BY MR. MANNING:

13 Q. So the dictionary says "superficial --" one of the  
14 definitions -- I agree with you there's several. But one of  
15 the definitions is not complete.

16                  So my question to you is would you agree with Mr. Young  
17 and his questions that the investigation here was not  
18 complete?

19 A. And the answer to that is "no" because it was  
20 completed.

21 Q. Okay. Another thing Mr. Young asked you about was, in  
22 a series of questions, does Ocwen restrict its investigation  
23 to the dispute code. Do you recall answering that one a  
24 couple times?

25 A. Yes.

Sandra Lyew - Recross (Manning)

112

1 Q. Okay. This morning we started with going over a whole  
2 series of documents, you and I, and we went over those. Do  
3 you recall that?

4 A. Yes.

5 Q. And that was a discussion about all the work that these  
6 credit analysts do in order to respond to an ACDV; --

7 A. Yes.

8 Q. -- right? I recall you saying -- and I just want to  
9 make sure I understand your testimony. I recall you saying  
10 that those credit analysts have access to Radar, a system  
11 from Litton --

12 THE COURT: Mr. Manning, you are leading at this  
13 point. Just rephrase your question.

14 MR. MANNING: Yes, I will, Judge.

15 BY MR. MANNING:

16 Q. Do you recall testifying about the various systems that  
17 the credit analysts have access to?

18 A. Yes. I also mentioned it to Mr. Young.

19 Q. What were those systems?

20 A. REALServicing, the Vault, e-OSCAR, and Radar.

21 Q. Those are all systems that contain information?

22 A. That is correct.

23 Q. That information is not contained within the dispute  
24 code.

25 A. That is correct.

Tina Daugherty - Direct (Young)

113

1 Q. So when Mr. Young was asking you, does Ocwen restrict  
2 its investigation to the dispute code, how would you answer  
3 that question?

4 MR. YOUNG: Objection, Your Honor.

5 THE COURT: Basis?

6 MR. YOUNG: The witness unequivocally answered  
7 "yes" to that question repeatedly.

8 THE COURT: I understand that to be the case, but  
9 I overrule the objection. The objection is based on one  
10 of -- potentially one of credibility and that's going to be  
11 up to the jury to determine.

12 Go ahead, please.

13 MR. MANNING: I don't recall the question exactly.  
14 Would you mind reading it back, Ms. Court Reporter?

15 (The court reporter read back the previous question,  
16 after which the following occurred:)

17 THE WITNESS: That part of the question is "no."  
18 It restricted the -- based on the ACDV dispute response,  
19 request and how it was responded. It was responded based on  
20 that request.

21 And I've tried to explain that to him. And we -- how  
22 it is in -- the research and investigated, it does go  
23 through numerous systems, sections available to view in the  
24 REALServicing, as well as the Radar and the Vault.

25 MR. MANNING: That's all I have. Thank you.

1 THE COURT: You can step down, ma'am.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Plaintiff, call your next witness.

4 MR. YOUNG: Plaintiff calls Tina Daugherty.

5 THE COURT: Ms. Daugherty, would you come up and  
6 take an oath or affirmation, please.

**TINA DAUGHERTY, PLAINTIFF'S WITNESS, SWORN**

DIRECT EXAMINATION

9 BY MR. YOUNG:

10 Q. Please state your name.

11 A. Tina Daugherty.

12 Q. Are you married?

13 | A. Yes.

14 Q. Who is your husband?

15 A. Dave Daugherty sitting at the table there.

16 Q. Have you ever testified in court before?

17 A. No, I have not.

18 Q. Are you scared to death?

19 | A. Yes.

20 Q. How long were you -- have you and Dave been married?

21 A. We've been married approximately 38 years, 39 actually.

22 Q. And at this anniversary it will be 40; right?

23 A. Correct.

24 Q. And the home you live in is subject to a mortgage  
25 that's serviced by Ocwen, isn't it?

Tina Daugherty - Direct (Young)

115

1 A. Yes.

2 Q. Who takes care of the finances at your house?

3 Historically, who's taken care of the finances?

4 A. My husband.

5 Q. And throughout your marriage, have you worked?

6 A. Yes, I did.

7 Q. Tell the jury your line of work and how long you've  
8 stayed at it.

9 A. I was retired as a Human Resource specialist, but I had  
10 a total of 35, 37 years of federal service working with  
11 different agencies of the government. I retired in May of  
12 2012 with the Bureau of Public Debt in Parkersburg, West  
13 Virginia.

14 Q. So throughout your employment and since your  
15 retirement, has Dave always taken care of all of the  
16 finances?

17 A. Yes, he has.

18 Q. We're talking payment of utility bills?

19 A. Pardon?

20 Q. Utility bills?

21 A. Everything, all the utilities, all the finances.

22 Q. Do you all have a joint bank account?

23 A. Yes, we did.

24 Q. And your paychecks and his paychecks go in that account  
25 and he pays the bills; is that correct?

Tina Daugherty - Direct (Young)

116

1 A. Yes, that's correct.

2 Q. For much of your married life your father -- your  
3 husband was a fireman. Yes?

4 A. Correct. That is correct.

5 Q. How is it -- what's it like being married to a fireman?

6 A. A little bit crazy. He worked two 24-hour shifts a  
7 week. And then also he worked full-time as an EMT. So we  
8 kind of crossed each other coming home from work.

9 Q. And the home that secures this -- that secures the  
10 Ocwen mortgage, is that where you all have raised your  
11 family?

12 A. Yes, for the majority of my children's life, yes.

13 Q. How long have you been in that house?

14 A. We've been there about 18 years now.

15 Q. Let me direct your attention to the spring of 2013.  
16 Did it come to your attention that there may be an issue  
17 about refinancing the home at that time?

18 A. Yes. I was aware of it.

19 Q. Okay. And how did you become aware of it?

20 A. My husband discussed it with me.

21 Q. Other than what your husband told you, did you have any  
22 involvement at all in either disputing credit history or  
23 trying to obtain refinancing?

24 A. No. That was all done by him.

25 Q. Having been married almost 40 years, if something is

Tina Daugherty - Direct (Young)

117

1 bothering Dave, does he have to tell you that something is  
2 bothering him?

3 A. No. I could usually tell. He would get quiet, a  
4 little bit withdrawn. It would affect his sleep patterns.  
5 But he didn't really talk about it because he didn't want to  
6 worry me. But I could -- you know, after being married so  
7 long, I could see the signs if something was bothering him.

8 Q. And beginning in the spring of 2013 through today, what  
9 have you observed with respect to your husband and whether  
10 or not this whole credit issue and foreclosure has affected  
11 him?

12 A. He was under a lot of stress, not sleeping well,  
13 getting up and down during the night, not eating which is  
14 one of his favorite things to do. He likes to eat.

15 Q. During his career as a fireman, he suffered a couple of  
16 serious injuries, didn't he?

17 A. Yes.

18 Q. And I think we heard some testimony, but did the first  
19 injury have something to do with the floor collapsing or the  
20 ceiling collapsing while fighting a fire?

21 A. Yes, when a floor collapsed -- well, a ceiling  
22 collapsed on top of him actually, yes.

23 Q. How did you hear about that?

24 A. Well, I was notified by my husband when he called me  
25 from the hospital.

Tina Daugherty - Direct (Young)

118

1 Q. Up to that point in his life, was he in pretty good  
2 health?

3 A. No. He had suffered, you know -- he had had a heart  
4 stent put in prior, several years prior to that, a couple  
5 years prior to that.

6 Q. So he had some heart issues. But he was still able  
7 with those issues to keep work as a full-time fireman?

8 A. Oh, yes, yes.

9 Q. And he returned after his injury where you heard from  
10 him from the hospital. He returned to work after that  
11 injury?

12 A. He did.

13 Q. Did he ever get back 100 percent where he was before  
14 that first injury as a fireman?

15 A. No, not 100 percent. Several years later he ended up  
16 with a herniated disk in his neck due to that several years  
17 later. So it was an on-going problem.

18 Q. And was there a second injury also on the job as a  
19 fireman?

20 A. Yes. He had another injury where they were fighting a  
21 fire and one of the other firemen was up on a ladder and  
22 fell and he tried to break his fall and they both went down  
23 with the, the other fireman on top of him, which he injured  
24 his shoulder in that, that incident.

25 Q. Based on your observations of your husband and the fact

Tina Daugherty - Cross (Kenney)

119

1 that you've lived with him for almost 40 years, after --  
2 starting in the spring, March of 2013 to today, have you  
3 observed anything that would lead you to believe that this  
4 whole credit reporting thing has caused him stress?

5 A. I'm sorry. Caused him to?

6 Q. To suffer from stress.

7 A. Well, he was under a great deal of stress and he, he  
8 didn't sleep well. So, you know, I think it affected his  
9 health in that way.

10 He was hospitalized a couple times with pneumonia. I  
11 don't -- you know, from an injury also that they thought was  
12 due from one of his incidents with the fire department where  
13 he has a lung problem. So he's had a couple stints in the  
14 hospital with pneumonia from that.

15 Q. Do you have any opinion on whether you believe that  
16 the, this whole credit dispute had any effect on your  
17 husband's day-to-day well-being?

18 A. Yes, I do believe so just under, being under so much  
19 stress of, you know, worrying about losing your home that  
20 you've lived in for 18 years.

21 Q. It's your home as well and you signed the same note,  
22 didn't you?

23 A. Yes.

24 Q. When it came to trying to deal with this, your husband  
25 took the brunt of the hit?

Tina Daugherty - Cross (Kenney)

120

1 A. He did.

2 Q. Did he try to shield you from all this?

3 A. Yes, yes.

4 Q. Thank you, Tina.

5 A. Thank you.

6 CROSS EXAMINATION

7 BY MR. KENNEY:

8 Q. Good afternoon, Ms. Daugherty.

9 A. Good afternoon.

10 Q. Do you remember having your deposition taken in this  
11 case?

12 A. Yes.

13 Q. And you recall that that deposition was under oath?

14 A. Pardon?

15 Q. You recall that that deposition was under oath;  
16 correct?

17 A. Yes.

18 Q. And I asked you how Mr. Daugherty had been affected by  
19 the credit issues in this case and you told me that it did  
20 add stress; is that right?

21 A. I said he was under a great deal of stress, that's  
22 correct.

23 Q. And you also told me that during this time you  
24 understood that there was a negative Ocwen account appearing  
25 on his credit report, but you weren't aware of any of the

Tina Daugherty - Cross (Kenney)

121

1 other negative accounts on his credit report at that time,  
2 were you?

3 A. That's correct.

4 Q. And you, you had mentioned some of the physical  
5 ailments that Mr. Daugherty had, and I believe you had said  
6 that those resulted from some accidents that happened in his  
7 previous employment; is that correct?

8 A. With the fire department, yes.

9 Q. And I had asked you how his status was at that time and  
10 you said that he was stable; is that right?

11 A. I don't recall saying that he was stable. He has  
12 on-going health problems.

13 Q. And with regard to how Mr. Daugherty's behavior had  
14 changed, I had asked you what about his behavior had changed  
15 and I believe you had said that his temper had started to  
16 flare a little bit and he tires easily; is that right?

17 A. I did not say anything about his temper. I did say I  
18 could tell he was under stress because he wasn't sleeping at  
19 night. I don't recall saying anything about temper flaring.  
20 I've not seen that side of him. Just -- he would get quiet  
21 actually and not talk.

22 Q. So how about with respect to him tiring easily? I know  
23 you had previously just testified that you noticed a change  
24 in his sleep pattern. So is that change -- are you saying  
25 that he, he's tiring easier now or it's the other way?

Tina Daugherty - Cross (Kenney)

122

1 A. He just didn't sleep well. He would get up and down  
2 during the night.

3 Q. Okay. So when you, when you told me at the deposition  
4 that he tires easily, was that incorrect or would you still  
5 agree with that?

6 A. Well, I meant that he didn't sleep well at night.

7 Q. And I had asked you if there was anything else to tell  
8 me about his behavior or the stress. And you said "no" and  
9 that you just couldn't put your finger on it. Is that  
10 right?

11 A. Well, just that he was quiet, you know. He didn't want  
12 to worry me about anything, so he would keep things to  
13 himself.

14 Q. Okay. So he didn't tell you much about all of this?

15 A. Well, I knew, you know, that he was trying -- he was  
16 having problems with Ocwen but, you know, he didn't -- he  
17 tried to keep me from worrying as much as possible.

18 Q. But you didn't know that he was having problems with  
19 any other credit agencies; is that right?

20 A. No, I did not.

21 Q. That's all the questions I have for you, Ms. Daugherty.  
22 I appreciate your time.

23 A. Thank you.

24 THE COURT: Any further questions of this witness,  
25 counsel?

1                   MR. YOUNG: No, Your Honor. May this witness be  
2 excused.

3                   THE COURT: Any objection, counsel?

4                   MR. KENNEY: No objection.

5                   THE COURT: All right, ma'am, you can step down.

6                   THE WITNESS: Okay. Thank you.

7                   THE COURT: Plaintiff, call your next witness.

8                   MR. YOUNG: Plaintiff rests, Your Honor.

9                   THE COURT: All right. Let me see you lawyers  
10 here at the bench for a moment.

11                  (Bench conference on the record).

12                  THE COURT: Mr. Manning, we had a bench conference  
13 relative to an objection -- well, out of the presence of the  
14 jury, whether it was at the bench or not -- relative to an  
15 exhibit that the plaintiff has offered regarding the  
16 designation for the deposition. I would like to preserve  
17 that until we have a break. And I anticipate that you have  
18 other motions. I would like for you to call your witness  
19 and I will take up all of the motions at a recess.

20                  MR. MANNING: Okay. So the Rule 50 motion is  
21 preserved? We just proceed with our witness?

22                  THE COURT: Yes. And I only do it in the interest  
23 of time so that we can proceed and me not play musical  
24 chairs with the jury making them come in and out.

25                  Anybody have any objection to proceeding in that

1 fashion?

2 MR. MANNING: No, Your Honor.

3 THE COURT: All right. Thank you all. The  
4 plaintiff has rested. Then I'll call on you to ask you in  
5 front of the jury if you have evidence that you want to  
6 present.

7 (Bench conference concluded)

8 THE COURT: Mr. Manning, the plaintiff has rested.  
9 Any evidence to present?

10 MR. MANNING: Yes, Your Honor. The first witness  
11 that we're going to call is by deposition.

12 THE COURT: All right.

13 MR. MANNING: It's the individual Lorin Hanks  
14 who's the representative of Aggressive Credit Repair, the  
15 company that the plaintiff hired. And we're going to read  
16 it in. I thought if it's okay with Your Honor that I will  
17 read the questions and Mr. Kenney can read the answers.

18 THE COURT: Yes, however you all want to do it.

19 Mr. Young.

20 MR. YOUNG: I have an objection, Your Honor.

21 THE COURT: All right. That you want to voice  
22 from there or you need to approach the bench?

23 MR. YOUNG: The objection is relevance of the, all  
24 of his testimony.

25 THE COURT: All right.

1 Counsel, did you hear?

2 MR. MANNING: I'm sorry, Judge, I did not.

3 THE COURT: There is a relevancy objection.

4 MR. MANNING: To Aggressive Credit Repair?

5 MR. YOUNG: Yes.

6 MR. MANNING: Okay. This is the company that  
7 we've been talking about since the beginning of trial. It's  
8 the company that Mr. Daugherty hired to dispute his credit.

9 THE COURT: I understand the company. You all  
10 come up here, please. I've missed you both.

11 (Bench conference on the record)

12 THE COURT: I understand the company. Let me hear  
13 the basis of the relevancy. I assumed that it had to do  
14 with the nature of the testimony of the deposition, but you  
15 all know that better than I do.

16 MR. YOUNG: It's the relevancy of all of this  
17 testimony by this witness. That's my objection because  
18 nothing this witness did -- what he did was write letters to  
19 Equifax. And based upon those disputes, Equifax generated  
20 its ACDV and sent it to Ocwen. Ocwen never saw any of what  
21 Mr. Hanks sent to Ocwen.

22 Moreover, the letters that he sent were not sent to  
23 Ocwen.

24 THE COURT: They were sent to Equifax you mean?

25 MR. YOUNG: They were only sent to Equifax. Ocwen

1 never saw the letters, never knew of the existence of the  
2 letters until this action was filed. They didn't see the  
3 letters. Nothing they said or did was based upon those  
4 letters. Those letters merely triggered the Equifax ACD,  
5 ACDV.

6 The issue here is what, what did Ocwen do to reasonably  
7 investigate the ACDV that came in. It never even knew of  
8 the existence of Aggressive reporting. If Aggressive  
9 reporting sent those letters or the man on the moon or  
10 Mr. Daugherty himself sent those to Equifax, they would have  
11 never ended up in the hands of Ocwen or had any effect on  
12 its behavior.

13 And, in addition, Ms. Lyew testified that when they  
14 received the ACDVs, they did not receive any documents with  
15 them. That's clear in her 30(b)(6) deposition.

16 So it's really an extraneous matter. It has no bearing  
17 on the issue before the Court, nor does it help explain the  
18 conduct or behavior of Ocwen when they receive these ACDVs.

19 THE COURT: Tell me the relevance, Mr. Manning,  
20 from your perspective, your client's perspective.

21 MR. MANNING: It goes to the core of the case,  
22 Judge. The whole case is about what the plaintiff did to  
23 dispute his credit and his responsibility for notifying with  
24 accurate, relevant information. The statute says all  
25 relevant information must be provided. And that's the

1 plaintiff's burden and he's the one who initiated the  
2 dispute.

3 And in those letters -- we've talked a lot about what  
4 the letters say and what he, Mr. Daugherty did. The letters  
5 that triggered the ACDV, which Mr. Young has spent an  
6 inordinate amount of time talking about, were based on a  
7 letter which is a form letter. Every single month it's the  
8 same. And there's a number of federal decisions that say  
9 that's a frivolous dispute and there's no need to  
10 investigate it at all.

11 The nature of the letter is a core issue to this case.  
12 And, further, when it goes to Equifax, Equifax has to review  
13 that and, based on that, identify the code, this dispute  
14 code that we keep talking about, and incorporate all the  
15 data from that letter into the ACDV that it generates.

16 The ACDV relies on the letter. Mr. Daugherty never  
17 disputed a single one to the credit bureaus. So when he  
18 sent this letter through this third party that he never even  
19 looked at the letters, that's what triggers this whole issue  
20 of an ACDV response.

21 And what's important, nowhere in the letter does it say  
22 duplicative tradeline. Nowhere in the letter does it say,  
23 "I have one account being reported twice." And those are  
24 the issues that Equifax, if it had existed, needed to put in  
25 the FCRA relevant information box, that box that we've been

1 talking about, again, throughout the trial.

2 THE COURT: Keep your voice down, please.

3 MR. MANNING: I'm sorry, Judge. That FCRA  
4 relevant information box is where the duplicative tradeline  
5 by industry standard is to be identified.

6 And, again, Equifax, to the extent that it should have  
7 known because the duplicative tradeline was actually in its  
8 own report and in its own system, if, even if ACR never told  
9 it, which is what the letter will show, it should have known  
10 and put that in there.

11 But clearly this letter goes to the core issue of  
12 responsibility in the case and the plaintiff's decision not  
13 to accept responsibility for his disputes in this case.

14 THE COURT: Okay. This is my ruling.

15 There are cases which talk about frivolous disputes.  
16 Those are instances where the consumer files a frivolous  
17 dispute. And the law -- the precedent talks about what the  
18 receiver of that information, what obligation the receiver  
19 has.

20 Here it's my understanding that Ocwen never received  
21 these letters. The core of this case is whether or not  
22 Ocwen conducted a reasonable investigation based on the  
23 information that it had.

24 And, so, if you all are telling me, and it's not  
25 disputed that Ocwen never received these letters from this

1 entity that assisted the plaintiff, then I would have to  
2 agree that it's not relevant for the jury's consideration  
3 because it's not information that came to Ocwen.

4 Equifax is no longer in the case. Ocwen's duty is to  
5 make a reasonable investigation based on the information  
6 that it has. And, so, if -- unless it's disputed that Ocwen  
7 received this information, then I would have to agree it's  
8 not relevant.

9 MR. MANNING: Well, two --

10 THE COURT: Do you dispute that?

11 MR. MANNING: Yes, Your Honor.

12 THE COURT: They did receive it?

13 MR. MANNING: There's two issues --

14 THE COURT: Did you receive the letters that Ocwen  
15 received -- did Ocwen receive the letters? Answer my  
16 question, please.

17 MR. MANNING: The "not his/not hers, never late,"  
18 those, those words -- you know what I'm talking about, the  
19 "not his," 001 code and the "never late."

20 THE COURT: The letter. I mean, I think my  
21 question is clear. Did Ocwen receive the letters that will  
22 be discussed in this deposition written by the, what was it,  
23 Aggressive Credit Company?

24 MR. MANNING: Aggressive Credit Repair.

25 THE COURT: Uh-huh.

1                   MR. MANNING: Those four words, "not his" and  
2 "never late" from the letter are put into the ACDV response  
3 dispute.

4                   THE COURT: Okay.

5                   MR. MANNING: So the actual letter --

6                   THE COURT: Uh-huh.

7                   MR. MANNING: I don't believe there is a dispute  
8 that it was received. The issue is the substance of the  
9 letter which creates the dispute by Equifax and what it  
10 relies on to code it and put it into the ACDV. Your Honor  
11 has ruled all the Equifax ACDVs come in. You have to know  
12 where that information comes from.

13                  THE COURT: Okay. Any other point? You said two  
14 points. I don't want to cut you off.

15                  MR. MANNING: Oh, relevance. The -- it's very  
16 broad, anything that's likely to prove or may prove, and  
17 it's --

18                  THE COURT: The existence or nonexistence of a  
19 fact.

20                  I find it's not relevant and I make that finding based  
21 on case law that -- I'm going to instruct this jury that the  
22 defendant is, under law, required to conduct a reasonable  
23 investigation based on the information that's received. And  
24 this is not information that was received.

25                  And I preserve Ocwen's objection and exception to my

1 not permitting testimony regarding those letters, finding  
2 them not to be relevant to the ultimate issue that the jury  
3 has to determine in this case.

4 Other, other matters other than this issue before we  
5 leave the bench?

6 MR. MANNING: Is, is Your Honor's ruling that none  
7 of this, this party's testimony comes into evidence?

8 THE COURT: I don't know what the party's  
9 testimony is. But if it is about these letters -- you all  
10 know what's in the deposition. I have ruled that the  
11 content of those letters isn't relevant because it's not  
12 information that Ocwen received. And Ocwen can only act  
13 upon the information that it receives for the jury to  
14 determine whether or not it acted reasonably, preserving  
15 again Ocwen's objection and exception.

16 MR. MANNING: And I can proffer what's in the  
17 deposition just so Your Honor understands.

18 THE COURT: All right.

19 MR. MANNING: The issue there is Mr. Daugherty,  
20 the borrower, the creditor who's doing the dispute, he is  
21 responsible for generating the dispute.

22 THE COURT: I understand that. We've gone over  
23 it.

24 MR. MANNING: No, no, I'm not going to redo it,  
25 Judge.

1                   THE COURT: All right.

2                   MR. MANNING: The issue is with him and the  
3 testimony of this, this third-party company.

4                   THE COURT: Uh-huh.

5                   MR. MANNING: The third-party company is relevant  
6 to what Mr. Daugherty has said on the stand. In his  
7 deposition Mr. Daugherty said, "I never told anybody about  
8 Aggressive Credit Repair. I believed Aggressive Credit  
9 Repair was going to put that in its letter."

10                  That's an important issue for the credibility not only  
11 of the reasonable investigation, but for the plaintiff  
12 himself. And the plaintiff knew about the letter, and the  
13 letter is relevant to the plaintiff's credibility.

14                  THE COURT: Well, if you have impeachment, Mr.  
15 Manning, you have to use the impeachment consistent with the  
16 rules of evidence. But that does not permit that letter to  
17 come in as substantive evidence because it's not relevant.

18                  It's like you could have impeachment testimony from  
19 some entity or person that wasn't even involved in the case  
20 at all. You would be permitted to impeach him if there is  
21 impeachment. But it doesn't come in as substantive  
22 evidence. If he said something inconsistent here, you get  
23 to impeach him.

24                  MR. MANNING: Uh-huh.

25                  THE COURT: You have that right. But it does not

1 come in as evidence because it's not relevant based on what  
2 you or Mr. Young have told me, that specifically being that  
3 Ocwen never received these letters, could not have acted on  
4 these letters, couldn't be part of their reasonable or  
5 unreasonable investigation because they didn't know about  
6 them.

7 Again, I preserve Ocwen's objection and exception.  
8 Let's go forward, gentlemen.

9 (Bench conference concluded)

10 THE COURT: Ladies and gentlemen, I apologize. I  
11 need to give you a recess. While you're out, do not discuss  
12 this case among yourselves or let anyone discuss it in your  
13 presence. And be back in your jury lounge at, let's say  
14 five minutes till the hour.

15 (Jury retired from the courtroom at 2:34 p.m.)

16 THE COURT: Counsel, while we were at the bench  
17 several of the jurors apparently asked the court security  
18 officer about going to the restroom. That's why I took the  
19 recess. We'll stand in recess.

20 (Recess taken from 2:35 p.m. until 2:55 p.m.)

21 THE COURT: Mr. Manning, you wanted to address an  
22 issue before the jury comes in?

23 MR. MANNING: Yes. The deposition that we're  
24 about to read from Aggressive Credit Repair, I wanted to  
25 make sure I understood what was, what I'm not permitted to

1 read.

2 THE COURT: I excluded that I thought.

3 MR. MANNING: And that's what I want to clarify,  
4 Judge, because there's, there's two issues.

5 My understanding of your ruling was the letter itself  
6 can't come in for the truth of the matter asserted, but it's  
7 relevant to the state of mind of both the plaintiff, the  
8 defendant, and Aggressive Credit Repair because it's  
9 reasonable investigation. And that's what's relevant to  
10 this whole concept of the investigation.

11 And then the second point, Judge, was the frivolous  
12 disputes. The -- there's a specific statute on, directly on  
13 point. And I just -- before Your Honor rules, if I could  
14 just put it on the record so you can see what statute I'm  
15 referring to.

16 THE COURT: Yes, sir.

17 MR. MANNING: It's 1681s-2(a)(8)(f), frivolous or  
18 irrelevant dispute. And specifically it says, this section,  
19 that's, that we're here to talk about, shall not apply if  
20 it's frivolous including," and then subpart little (i), big  
21 (I) -- sorry for all the parens -- "by reason of the failure  
22 of a consumer to provide sufficient information to  
23 investigate the disputed information or the submission by a  
24 consumer of a dispute that is substantially the same as a  
25 dispute previously submitted."

1       In this case, the testimony from this witness, ACR, and  
2 the letter that's attached to that deposition and identified  
3 is an identical letter that's sent every month with the same  
4 dispute, "not his, never late."

5       And then you go down and follow that through and it  
6 says, "The act specifies the information that a consumer who  
7 disputes the accuracy of information must provide to the  
8 furnisher including," quote, "identifying the specific  
9 information that is being disputed, explaining the basis for  
10 the dispute, and including all supporting documentation  
11 required by the furnisher to substantiate the basis of the  
12 dispute."

13       That letter is the information that's generating the  
14 dispute. And the text of that letter is in the dispute  
15 code, and also in at least some of the ACDVs.

16       There's actually that FCRA relevant information box  
17 where it says "call Albert or Tony Gill." That's directly  
18 from the letter that goes into the ACDV by Equifax and gets  
19 sent to Ocwen. And that is received.

20       And the testimony from this particular ACR is that that  
21 person doesn't exist. It's, it's made up and it's  
22 frivolous. And that goes to this statute.

23       And then if you follow further down on that statute,  
24 the Court determines that a dispute is frivolous if the  
25 consumer has failed to provide sufficient information to the

1       furnisher to aid in the furnisher's investigation of the  
2       dispute. If the dispute is frivolous, the furnisher cannot  
3       be liable to a consumer for the failure to investigate the  
4       completeness or accuracy of that information.

5           If the consumer does not comply, the furnisher has no  
6       duty to report the debt as disputed and the furnisher is not  
7       subject to liability under 1681s-2(b).

8           Courts have held that it is relevant in determining  
9       whether a furnisher has violated that section. There is a  
10       duty to, to re-investigate a consumer complaint lodged  
11       directly against or through a consumer reporting agency when  
12       the dispute is determined to be frivolous or irrelevant;  
13       again, no duty.

14           Then I have a couple of case cites for Your Honor. And  
15       the first is *Palouian vs. FIA Card Services*. It's 2013 U.S.  
16       Dist. LEXIS 61861 from the Eastern District of Pennsylvania,  
17       April 29th, 2013, granting a motion to dismiss holding it  
18       was not necessary to decide whether the notice of  
19       determination pursuant to that section.

20           Next, plaintiff here did not tell Equifax that there  
21       were two different tradelines. ACR also didn't tell. And  
22       ACR in its deposition says it didn't know, even though it  
23       had more information than Ocwen had. They actually had the  
24       credit report with the two tradelines.

25           And that further goes to support the information that

1 Ocwen had which is less than what they had, both the  
2 plaintiff and ACR, and that they were not providing to  
3 Equifax demonstrates further that it's not only a frivolous  
4 dispute, but that Ocwen's investigation was reasonable.

5 Plaintiff has not provided for why the account was not  
6 his in that letter. This is insufficient information and  
7 does not comply with the requirements of the section.

8 The cite there, Judge, is *Noel vs. First Premier Bank*,  
9 2012 U.S. Dist. LEXIS 32595, Middle District of  
10 Pennsylvania, March, 2012.

11 Plaintiff's request was frivolous and irrelevant  
12 pursuant to 1681s-2(b)(A)(8)(f)(ii) because plaintiff failed  
13 to provide sufficient information to investigate.

14 Next, identifying a problem with a payment history,  
15 profile account status, which is that dispute code that's in  
16 the ACDV, was insufficient to alert either Ocwen to the fact  
17 that Equifax was reporting two tradelines for the same  
18 account. Because plaintiff didn't provide sufficient  
19 information, Ocwen corrected the information that plaintiff  
20 had identified.

21 So, again, this goes to the state of mind and it's  
22 directly relevant to the exact statute that we're here to  
23 talk about.

24 Disputes after the first dispute were frivolous because  
25 the plaintiff here submitted the same dispute through this

1 company, ACR, every month for over a year with no additional  
2 information. And the testimony from ACR is that information  
3 doesn't change and it's being incorporated, at least in  
4 part, into the ACDVs, the Albert or, "call Albert or Tony  
5 Gill" which he says isn't actually a real person at Ocwen.

6 Another cite, *McCallum vs. Experian*, 2006 U.S. Dist.  
7 LEXIS 57068, Northern District of Illinois, 2006, holding  
8 that three successive letters repeating the same assertion  
9 with no additional information does not trigger a duty to  
10 investigate.

11 *Omar vs. Experian*, 2012 U.S. Dist. LEXIS, 99694,  
12 Southern District Indiana, 2012, repeat disputes are  
13 frivolous if the consumer provides no additional relevant  
14 information with them.

15 Here the plaintiff and ACR on behalf of the plaintiff  
16 submitted the same disputes repeatedly, "not his, never  
17 late," and even his letters in March, March, 2014, simply  
18 complain again about those same issues. And even his direct  
19 disputes just regurgitate the same thing, "not his, never  
20 late," as opposed to identifying the actual problem, a  
21 duplicative tradeline or one account reporting twice.

22 And for that reason, obviously we believe that it's a  
23 frivolous dispute, but this deposition testimony and the  
24 letter are relevant to that claim.

25 THE COURT: Any response you want to give,

1 counsel?

2 MR. YOUNG: Your Honor, the Court ruled this  
3 testimony is irrelevant because Ocwen never saw or acted  
4 upon it.

5 Now, counsel raises now the frivolous exception or the  
6 frivolous defense. Mr. Nolan and I are well aware of that  
7 defense. That's why when we took the deposition, the  
8 30(b)(6) deposition of the witness we had her testify  
9 specifically that these were never considered frivolous and  
10 that they investigated each and every one as a new dispute.

11 And here is the testimony, the question: "So if they  
12 do check and they see similar disputes in the past, would  
13 they make a note in their log saying this is a frivolous  
14 dispute, so to speak?"

15 Answer: "No. They just -- they'll notate the account  
16 accordingly based on the current dispute that comes in,  
17 whether it's the same or slightly different or pretty much,  
18 for instance, this account the same."

19 Question: "And that's one thing I noticed. We'll get  
20 into it. It seems like Ocwen conducted an investigation  
21 each time."

22 Answer: "That is correct."

23 "And does Ocwen ever say, refuse to conduct a  
24 re-investigation if they deem a dispute is repetitive?"

25 Answer: "It's regardless whether it's the same or not,

1 to still conduct the same account, same review, same  
2 research."

3 "And, now, so when Ocwen returns the ACDV to the credit  
4 reporting agency, are there any additional --"

5 She goes into something else there. But we clearly  
6 cover that at no time did Ocwen ever treat any of these as  
7 frivolous disputes. It investigated each and every one.  
8 Counsel is re-arguing a ruling of the Court and there's no  
9 basis for it.

10 He didn't mention to the Court that we covered the  
11 frivolous issue in the deposition. It should not come in  
12 for any purpose. And until you absolutely tell counsel  
13 that, we're going to continue this dialogue I'm afraid.

14 THE COURT: And is it your position that I have  
15 not absolutely told counsel that, Mr. Young?

16 MR. YOUNG: I think you absolutely have told  
17 counsel that.

18 THE COURT: The, the evidence that is sought to be  
19 admitted here is evidence of which Ocwen was never made  
20 aware of.

21 I have before me and have also reviewed the entirety of  
22 the applicable statute, including that provision under (f)  
23 that refers to frivolous or irrelevant disputes. And the  
24 language in it, when it speaks to a situation where someone  
25 submits a previous dispute, it refers to it as frivolous

1       when the person receiving it has already performed the  
2       person's duties under the paragraph.

3           This letter, this testimony that has to do with  
4       Aggressive Credit Repair, information that this particular  
5       defendant did not have at the time it received and acted on  
6       the ACDVs is simply not relevant.

7           It did not come to them. It is not a frivolous dispute  
8       that was received by them. The letter went to Equifax.  
9       That's undisputed. And, quite frankly, there's no way that,  
10      as I've indicated previously, that Ocwen could have acted  
11      reasonably or unreasonably based upon information that it  
12      did not receive.

13           And, so, again I find that the evidence is not  
14       relevant. I exclude it. And, again, I preserve Ocwen's  
15       objection and exception to that ruling.

16           There is an outstanding issue, since we've got the jury  
17      held up now well past time, with respect to the Plaintiff's  
18      Exhibit 26. There's been an objection. You've rested but I  
19      preserved this issue until we could get to a break.

20           The plaintiff has rested and Mr. Manning cited an  
21       objection to this document during the course of the  
22       testimony that you presented. Is there any response to this  
23       objection?

24           MR. MANNING: From me?

25           THE COURT: Is there a response to the objection?

1                   MR. YOUNG: Your Honor, my response is this was  
2 the notice of the deposition. This was the designated --  
3 this was the designee in response to that notice. The --

4                   THE COURT: Mr. Manning indicated that there was  
5 agreement between the parties -- that there was an objection  
6 to it and that there was an agreement to the parties with  
7 respect to certain aspects of it. And as I understood it,  
8 that was his primary objection. Is there a response?

9                   MR. YOUNG: There is no such agreement, Your  
10 Honor. It's not reflected in the deposition. It's not  
11 memorialized anywhere. I asked Mr. Nolan. He's the one  
12 that actually went to the deposition. He as an officer of  
13 the Court can address this. But normally if you have  
14 somekind of agreement, you put it at the beginning of the  
15 deposition and on you go, but it's not there.

16                   THE COURT: Mr. Manning.

17                   MR. MANNING: Yes. It was a response. I sent an  
18 e-mail to Mr. Nolan. We followed up on it. It wasn't  
19 written correspondence. Mr. Nolan said to me, "Yes, this  
20 deposition is being conducted subject to your objections."

21                   THE COURT: All right. Well, that's -- as I  
22 understand it, and maybe you all meant something entirely  
23 different, but generally when someone indicates that, it  
24 doesn't mean that there is an agreement of any type other  
25 than that you're going forward with the deposition and that

1       the party has an opportunity to bring up the objections  
2       later. That's before the Court.

3           Going forward with the deposition subject to your  
4       objections, that's what I interpreted that to mean. Did you  
5       all mean something different or was it your interpretation  
6       that it meant something different?

7           MR. MANNING: That, yes, Judge, that our  
8       objections were preserved. And throughout that deposition  
9       we objected based on scope, form, preserving and also  
10      limiting the testimony of that witness.

11           THE COURT: All right. And was that -- when you  
12      say limiting that witness, did you mean in the context of  
13      the issues which have been outlined in it as to what she  
14      would testify to, Mr. Manning?

15           MR. MANNING: I can't speak for Mr. Nolan's  
16      understanding. But my understanding, Judge, was that we  
17      would not be postponing and, and having motions practice.  
18      Instead, our objections would be preserved.

19           Mr. Nolan, if he was unsatisfied with this witness's  
20      knowledge, would then tell me and I would provide a new  
21      witness because I had to only permit this person to testify  
22      as to what she knew.

23           THE COURT: Mr. Nolan.

24           MR. NOLAN: Your Honor, this deposition had been  
25      rescheduled on several occasions and actually took place

1 after the Court's deadline to end discovery and end  
2 depositions.

3 After that point, we had no more opportunity to  
4 schedule anyone else as the trial date was fast approaching.  
5 My understanding was Mr. Manning filed objections to the  
6 notice of deposition and we proceeded to take the deposition  
7 at that point.

8 I don't recall a specific agreement saying that,  
9 anything along these lines of, you know, "You'll produce  
10 someone else." It was just a matter of, "Here's the notice  
11 of deposition." They objected to it. We took the  
12 deposition at that point.

13 THE COURT: All right. Well, I have two people  
14 saying two different things. I wasn't there. There's no  
15 way for me to ascertain and I'm not going to prejudice  
16 anyone when I'm in a position that I don't know.

17 And, so, out of an abundance of caution, I'm going to  
18 exclude -- and I think I referred to it as 26 and it's  
19 actually written here as Plaintiff's Exhibit 29. And I  
20 exclude it only for the reason that I am in a position where  
21 I cannot determine whether or not there was an agreement.

22 I preserve everybody's objection and exception to the  
23 ruling.

24 Get the jury, please.

25 (Jury returned into the courtroom at 3:18 p.m.)

John Ulzheimer - Direct (Manning)

145

1                   THE COURT: You all be seated.

2                   Mr. Manning, call your next witness.

3                   MR. MANNING: Your Honor, the defendant calls John  
4 Ulzheimer.

5                   THE COURT: Sir, would you come up and take an  
6 oath or affirmation, please.

7                   **JOHN ULCHEIMER, DEFENDANT'S WITNESS, SWORN**

8                   DIRECT EXAMINATION

9 BY MR. MANNING:

10 Q. Good afternoon, Mr. Ulzheimer.

11 A. Good afternoon.

12 Q. Will you please state your full name for the Court.

13 A. John Robert Ulzheimer.

14 Q. Have you ever been employed in the consumer credit  
15 industry?

16 A. I have.

17 Q. Where?

18 A. A variety of places. I have worked at Equifax Credit  
19 Information Services.

20 I've worked at a company called FICO, or Fair Isaac,  
21 which is commonly known for their work in credit scoring.

22 I worked for a company called Credit.com.

23 I worked for a company called Smart Credit.

24 And I have done concurrent contract work for a variety  
25 of credit-related companies for the past decade or so.

John Ulzheimer - Direct (Manning)

146

1 Q. How long did you work at Equifax?

2 A. Six years.

3 Q. When did that start?

4 A. Thanksgiving, 1991.

5 Q. What was your role there?

6 A. I started as a Consumer Service Agent, which is a fancy  
7 way of saying I took phone calls from consumers who had  
8 issues with their credit reports.

9 I performed aspects of the consumer dispute process all  
10 the way from speaking with the consumer, logging their  
11 complaint in the Equifax system, all the way through to  
12 receiving the verification response from the furnisher,  
13 which is usually a bank or a credit card issuer or  
14 collection agency.

15 I then moved on to a more managerial level role where I  
16 actually managed a variety of teams that performed that  
17 function, as well as working with what Equifax calls  
18 specialty teams that deal with specialized types of disputes  
19 relevant to things like mixed credit reports, fraud, credit  
20 repair types of disputes.

21 Later on in my time with Equifax, I moved into what  
22 they refer to as an account management position, which means  
23 that I managed the relationship between Equifax and the  
24 users of their information.

25 And, so, now instead of dealing with consumers, I'm

John Ulzheimer - Direct (Manning)

147

1 dealing with banks, credit card issuers, auto lenders, auto  
2 dealerships, the companies that would actually buy the  
3 credit report information and use it for risk assessment  
4 purposes. That was my last position with the company.

5 Q. Okay. Why did you leave that position?

6 A. My last position took me from Atlanta to Jacksonville,  
7 and my role was to manage the relationship between Equifax  
8 and the company formerly known as Barnett Bank.

9 And soon after I relocated my family to Jacksonville,  
10 Barnett Bank was sold to the bank formerly known as Nations  
11 Bank which then became Bank of America through acquisition.

12 So I had a choice. I could either move my family to  
13 Charlotte, which is where Bank of America is headquartered,  
14 or I could stay in Jacksonville, or I could look for other  
15 opportunities. And, so, I chose to look for other  
16 opportunities.

17 Q. After leaving Equifax, you went to -- you mentioned a  
18 company called FICO.

19 A. That's correct.

20 Q. What is FICO?

21 A. So FICO is an acronym. And it's an acronym for Fair  
22 Isaac Corporation. And FICO is commonly known in the credit  
23 related world for essentially inventing and managing the  
24 industry standard credit scoring system.

25 In fact, it's almost become an institutionalized name.

John Ulzheimer - Direct (Manning)

148

1 Instead of looking at a credit score, you look at a FICO  
2 score. That's primarily what FICO does. That's their core  
3 competency.

4 Q. While you were at -- let's start with this. How long  
5 were you at FICO?

6 A. Seven years.

7 Q. While you were there, what were your roles and  
8 responsibilities?

9 A. So FICO is one of those jack-of-all-trades,  
10 master-of-all types of companies. And, so, my -- I was in  
11 the credit bureau products unit which means that anything  
12 that had anything to do with the credit scoring systems that  
13 we built that were sold by any of the five North American  
14 credit reporting agencies, which are the three big ones in  
15 the U.S. and then the two big ones in Canada, was managed  
16 out of our group, which means anything from education to  
17 design and development to installation to validation,  
18 pricing. I mean, if it touched the credit scoring models,  
19 it was managed out of our group.

20 Q. So when you talk about credit scores, you refer to  
21 credit bureaus, the three national ones. What are they?

22 A. In the U.S. Equifax, TransUnion, and at the time it was  
23 TRW, but TRW doesn't have a credit services division any  
24 longer. They sold their data and it is now owned by a  
25 company called Experian.

John Ulzheimer - Direct (Manning)

149

1 Q. So at FICO you were involved with the actual scoring  
2 model, how a credit score is, is computed or generated?

3 A. That's exactly right.

4 Q. In your role at FICO were you involved with how the  
5 various factors that are considered on a credit report for a  
6 consumer are actually used to compute credit scores?

7 A. Yes.

8 Q. During your involvement there were you involved with  
9 how those credit scores and the various information on  
10 credit reports affect credit applications or denials?

11 A. Like risk assessment and underwriting?

12 Q. Yes.

13 A. Yes.

14 Q. So tell us just about the credit application denial  
15 process and how someone's credit score and credit report are  
16 utilized in that model.

17 A. Sure. So I'll give you a real good example. If a  
18 consumer wants to go out and buy a car and they want to  
19 finance the car, they may go to their bank or their credit  
20 union and try to get qualified for an auto loan before they  
21 go to the different car dealerships to test-drive  
22 automobiles so that they're actually bringing the financing  
23 with them.

24 So they would go to their financial institution. They  
25 would fill out a credit application. And it's ubiquitous in

John Ulzheimer - Direct (Manning)

150

1 the credit application process that the lender is going to  
2 want to access a credit report and a credit score.

3 They get to choose which of the credit bureaus they're  
4 going to use, of course, but they will generally pull one  
5 credit report from one of the three national credit  
6 reporting agencies.

7 Once they have this information, now they have the  
8 consumer's credit history and then the credit score that's  
9 generated off of that credit history. They will use that  
10 information and, based on their own policies, their own, you  
11 know, risk assessment policies, they'll determine do I want  
12 to do business with this consumer and, if I do want to do  
13 business with this consumer, under what terms do I want to  
14 do business with this consumer, meaning how much am I  
15 willing to let he or she borrow, what kind of interest rate  
16 am I going to assess, what kind of down payment requirement  
17 am I going to, to apply before I'm going to do business with  
18 this consumer.

19 And there are going to be scenarios, unfortunately,  
20 where the lender just simply says, "I don't want to do  
21 business with this consumer because they're just simply too  
22 risky for me."

23 That's commonly referred to as a credit denial, or more  
24 formally referred to as an adverse action. And, so, that  
25 process, as that -- as the process continues, the lender

John Ulzheimer - Direct (Manning)

151

1 will generally send a letter to the consumer or the  
2 applicant notifying them that they have been denied credit.  
3 And they'll give some required disclosures, where they got  
4 the credit information from, how to contact the credit  
5 bureau, their rights. And more recently since 2011 that  
6 letter has had to include a credit score.

7 Q. So that --

8 MR. YOUNG: Your Honor, --

9 THE COURT: Yes, sir.

10 MR. YOUNG: Your Honor, it appears that Mr.  
11 Manning's covered this witness's qualifications. We'd like  
12 an opportunity to *voir dire* the witness as to his  
13 qualifications before he begins giving opinions.

14 THE COURT: Any objection to that, Mr. Manning?

15 MR. MANNING: I just hadn't finished. I still  
16 have more qualifications to go through.

17 THE COURT: Is there an objection to their asking  
18 questions before he's qualified as a witness?

19 MR. MANNING: I would prefer to finish.

20 THE COURT: I'm not saying you can't finish. I'm  
21 simply asking is there an objection to them questioning him  
22 before he's qualified as a witness?

23 MR. MANNING: Oh, I understand. No, there's not.

24 THE COURT: All right. When he finishes, then  
25 you'll be able to examine the witness.

1 Go ahead, please.

2 BY MR. MANNING:

3 Q. So we've covered Equifax, FICO, and the credit scoring  
4 credit application that you did at FICO. Next you went to  
5 Credit.com?

6 A. Correct.

7 Q. What did you do there?

8 A. I -- at Credit.com I had a variety of roles with the  
9 company, a lot of content work which means I did a lot of  
10 writing. I actually wrote several books about credit  
11 scoring and credit reporting when I was at FICO.

12 I also built some web-based credit scoring tools for  
13 the company that they actually still have installed on their  
14 website.

15 And I actually started doing a lot of media interviews  
16 on behalf of the company regarding, you know, how credit  
17 scores are used in mortgage lending, how they're used in  
18 their types of lending, what influences credit scores, what  
19 are consumers' rights. And I was there -- let me think --  
20 for a little over six years.

21 Q. Okay. After the additional six years at Credit.com,  
22 you mentioned another company, Smart --

23 A. Smart Credit.

24 Q. Smart Credit?

25 A. That's right.

1 Q. And how long were you there?

2 A. I was there for a shade less than three years.

3 Q. What did you do at Smart Credit?

4 A. So my role there was similar to my role at Credit.com,  
5 a lot of content work, again a lot of writing. I actually  
6 wrote my fourth book when I was working for Smart Credit.

7 I did a lot of media interviews on behalf of the  
8 company. The company's primary product, if you will, was a  
9 credit monitoring service. So I actually did a lot of  
10 consulting with the company to help them optimize the  
11 deliverable of that service.

12 Q. Okay. So after the three years at Smart Credit, where  
13 did you go next?

14 A. So, so at that time and, actually, when I went to work  
15 for Credit.com, I had actually also formed my own small  
16 business. And I started doing a lot of expert witness work  
17 and other contract type of work concurrently.

18 Q. When you mentioned your fourth book -- and you don't  
19 have to tell me about all of them. I'm sure they're long.  
20 What's the -- topically, what are the books about?

21 A. One of them is about identity theft. And three of them  
22 are, are essentially about credit reporting and credit  
23 scoring.

24 Q. Now, you mentioned already quite a bit about credit  
25 scoring, credit applications, credit denials, and that whole

John Ulzheimer - Direct (Manning)

154

1 process, how it's utilized by lenders or potential lenders.

2 In addition to your work for those businesses, actually  
3 working in the industry for what I compute as 23 years -- is  
4 that right?

5 A. It's -- this is -- since '91, so we're in the 25th year  
6 now.

7 Q. And I was just going up through Smart Credit.

8 A. I see.

9 Q. I haven't gotten to the rest yet. But for that, that  
10 first period where you're actually employed as someone  
11 working for a business that does credit and credit  
12 application scoring, et cetera, is that 23 years  
13 approximately?

14 A. Give or take. I haven't actually added it up like  
15 that, but that sounds about right.

16 Q. Now, I want to ask you about other publications. I  
17 have your expert report. It is lengthy in the publications.  
18 I want you to tell, tell us about just the publications that  
19 you've written about credit scoring, credit applications,  
20 and credit denials.

21 A. I -- so since I left FICO, part of any contract or job  
22 I've had since then has involved content, so writing. And  
23 it's -- we're in the thousands at this point because every  
24 single month I have a certain number of deliverables that I  
25 have to send to my clients. And these articles are all

John Ulzheimer - Direct (Manning)

155

1 about something having to do with consumer credit, and most  
2 of them having to do with, to some extent, credit reports  
3 and, to some extent, credit scores.

4 And it's hard for me to sit down and give you an exact  
5 number just because I've been doing this for almost 12 years  
6 now. But we're, we're talking well into the thousands.

7 Q. Now, the second category I'd like you to ask -- I'd  
8 like to ask you about the publications. Have you written  
9 publications about the credit dispute resolution process?

10 A. Yes. And, in fact, that's something that was in at  
11 least two of my books, actually two of my books and one of  
12 my consumer handbooks. And many of my articles, at the very  
13 least, tacitly mention the fact that the consumer has the  
14 right to challenge information on their credit report.

15 And many of my articles go even deeper than that and  
16 actually explain this is how you do it. And some even go  
17 deeper than that and explain this is the process that  
18 actually occurs when you do it.

19 So it depends on who the audience is intended to be for  
20 the article as to how deep I dive into that particular  
21 topic.

22 Q. So 23 years actually working as an employee for a  
23 business in the industry, then 12 additional years; 35  
24 total.

25 A. Well, concurrent. A lot of that is concurrent.

John Ulzheimer - Direct (Manning)

156

1 Q. So just give me the total number of years.

2 A. So '91 through today. So it's my entire post-college  
3 working career.

4 Q. Have you ever -- well, you've already answered you've  
5 testified as an expert witness before. Can you proximate  
6 the number of times you've been retained as an expert  
7 witness on a credit industry issue?

8 A. I actually had to count that for another case a couple  
9 of weeks ago; 230, give or take, cases where I've been  
10 retained.

11 Q. Are you being paid for your role as an expert witness  
12 in this case?

13 A. I am.

14 Q. And what are you being paid by the hour?

15 A. \$425 plus whatever expenses I incur like travel and  
16 such.

17 Q. Have you reviewed any materials in preparation of your  
18 expert report and your testimony here today?

19 A. I have, yes.

20 Q. What materials have you reviewed in preparing your  
21 analysis and opinions of the issues relevant to this matter?

22 MR. NOLAN: Your Honor, I would interject at this  
23 point and ask that the scope of the expert's testimony and  
24 his report is going to be the heart of our *voir dire* of him  
25 as well. I would like the opportunity before he begins

John Ulzheimer - Direct (Manning)

157

1 offering what he's reviewing and what he's relying upon to  
2 ask him these questions as well.

3 THE COURT: The -- what he has reviewed and what  
4 he -- for purposes of his testimony and for purposes of  
5 giving his opinion I think is beyond the qualifications of  
6 an expert. Mr. Young has asked to question him before we go  
7 beyond that and I've granted that to him.

8 MR. MANNING: So at this point, Judge, I would, I  
9 would move for the -- I would tender this witness as an  
10 expert in the credit industry on issues including credit  
11 reporting, credit disputes, credit scoring, credit  
12 applications, and credit denials.

13 THE COURT: All right.

14 Mr. Young or Mr. Nolan, whoever is going to do the *voir*  
15 *dire*, you can do it at this point.

16 MR. NOLAN: We're going to focus on the scope of  
17 the testimony today as to the issues he'll be presenting to  
18 the Court based upon his report that he's provided at this  
19 point. His credentials are extensive. We understand he  
20 probably will be able to assist the trier of fact. And I  
21 just wanted to question the witness about the content of his  
22 point so we can have a clearer idea of what the scope of his  
23 testimony will be today.

24 THE COURT: Well, that's a different issue than I  
25 understood from Mr. Young.

John Ulzheimer - Direct (Manning)

158

1 Is there an objection to that, Mr. Manning?

2 MR. MANNING: Yes, Judge.

3 THE COURT: All right. I'm going to sustain the  
4 objection to questioning him on the boundaries of his  
5 opinion. If you want to question regarding his  
6 qualifications, I'll permit that. But, otherwise, I will  
7 expect you to object if he goes beyond the boundaries of the  
8 report which I'm sure has been provided, preserving the  
9 plaintiff's objection and exception.

10 Let's move forward, please.

11 MR. MANNING: I take it there's no objection from  
12 the plaintiffs to my request to tender this witness as an  
13 expert and I assume --

14 THE COURT: Mr. Nolan.

15 MR. NOLAN: No objection, Your Honor.

16 THE COURT: All right. Go ahead, please.

17 BY MR. MANNING:

18 Q. So, now, on the materials, the materials that you  
19 reviewed in preparation of your expert report. I have your  
20 expert report in front of me. And I'm going to hand it to  
21 you because it has all of your analysis and opinions in this  
22 case.

23 MR. MANNING: May I approach, Your Honor?

24 THE COURT: Yes, sir.

25 BY MR. MANNING:

John Ulzheimer - Direct (Manning)

159

1 Q. Mr. Ulzheimer, the report is lengthy. The last exhibit  
2 attached to it, Exhibit C, is "documents relied upon."

3 A. That's correct.

4 Q. What materials did you have available to you and did  
5 you consider in preparation of your analysis and opinions in  
6 this case?

7 A. The list is about 40 documents long, so just please  
8 bear with me.

9       The complaint; the answer to the complaint; the notice  
10 of filing of notice of removal; the notice of removal;  
11 Ocwen's financial interest disclosure statement; a standing  
12 order assignment and referral of civil actions and matters;  
13 an order of, an order and notice -- defendant's, excuse me,  
14 defendant Equifax's answer and defenses to plaintiff's  
15 complaint; defendant Equifax's corporate disclosure  
16 statement; notice of change of attorney information  
17 regarding Jed Nolan and Sara Brown; report of parties'  
18 planning meeting; the Court's scheduling order; motion to  
19 extend plaintiff's deadline to disclose expert witness; the  
20 report of Mr. Evan Hendricks; Ocwen's Rule 26(a)(1)  
21 disclosures; plaintiff's Rule 26(a)(1) disclosures;  
22 Equifax's Rule 26(a)(1) disclosures; Equifax's first, excuse  
23 me, Equifax's first request for admissions; Equifax's first  
24 request for production of documents; plaintiff's first set  
25 of interrogatories to Equifax; plaintiff's first request for

John Ulzheimer - Direct (Manning)

1 production of documents to Equifax; plaintiff's first set of  
2 interrogatories to Ocwen; plaintiff's first request for  
3 production of documents to Ocwen; plaintiff's responses to  
4 Equifax's discovery requests; Ocwen's responses to  
5 plaintiff's first set of interrogatories and RFP, request  
6 for production, excuse me; Equifax's responses to  
7 plaintiff's first set of interrogatories; Equifax's  
8 responses to plaintiff's first request for admissions;  
9 Equifax's responses to plaintiff's first request for  
10 production of documents; the 1,092 pages with the Bates  
11 range EIS Daugherty 1 through 1,092.

12 Q. What are those document? Who provided them?

13 A. These are Equifax Information Services documents.

14 Q. Thank you.

15 A. They're Equifax's docs.

16 The 1,746 pages with the Bates range D like David, D  
17 like David, slash OLS 1 through 1,746.

18 Q. Who provided those documents?

19 A. Those are Ocwen's.

20 Q. Please continue.

21 A. Okay. And then the 118 pages with the Bates range or  
22 the Bates numbers ACRLLC 1 through 118.

23 Q. Whose documents are those?

24 A. Those are Aggressive Credit Repair's documents.

25 MR. YOUNG: Objection, Your Honor.

John Ulzheimer - Direct (Manning)

161

1 THE COURT: Basis?

2 MR. YOUNG: He's referring to something upon which  
3 the Court already made a ruling.

4 THE COURT: Mr. Manning.

5 MR. MANNING: He's merely identifying documents  
6 that are part of his report and what was considered in  
7 forming his analysis and opinions.8 THE COURT: At this point in time, Mr. Young,  
9 given the response to the question as to what he reviewed, I  
10 overrule it. That should not preclude you from making other  
11 objections on the subject matter if need be as we go  
12 further. But I find nothing improper about the witness  
13 testifying to what he's reviewed.14 THE WITNESS: I'm sorry. I don't know if you  
15 wanted me to --

16 BY MR. MANNING:

17 Q. No problem. I'll get us back on track. The last thing  
18 you read was Aggressive Credit Repair documents that they  
19 provided in this matter, 118 documents.

20 A. Pages 1 through 118, that's right.

21 Q. Okay. Now, based on your analysis of all those  
22 documents, have you formed opinions about what occurred in  
23 this matter?

24 A. I have, yes, sir.

25 Q. Now, let's, let's get to those by starting with some

John Ulzheimer - Direct (Manning)

162

1 explanation about roles, responsibilities.

2 A. Okay.

3 Q. And I know you could talk about this at length, so I'm  
4 going to encourage you, given the time, to try to keep it  
5 relatively short.

6 A. Okay.

7 Q. Give us the short version. The -- generally, what's,  
8 what's the consumer credit report? What is it?

9 A. It's -- a credit report is essentially a list of  
10 liabilities and some public records that are maintained by  
11 credit reporting agencies, Equifax, TransUnion and Experian.

12 And this report, practically speaking, looks  
13 essentially like a list of all of the accounts that you have  
14 with your lenders, any collections you may have, any public  
15 records that you may have, things like bankruptcies and  
16 judgments and tax liens.

17 There's also a listing of your personal information,  
18 your name, your, your current address, and a variety of  
19 former addresses, date of birth, your Social Security  
20 number.

21 Some credit reports contain employment information.  
22 Some don't. And most credit reports contain a list of  
23 what's referred to as inquiries; in other words, a record of  
24 companies that have pulled your credit report.

25 Q. There are -- you mentioned a number of things. One of

John Ulzheimer - Direct (Manning)

163

1 the things you mentioned was personal information. Why, why  
2 is it important for a credit report to have personal  
3 information?

4 A. So the, the primary reason is so that the credit  
5 reporting agencies can actually attach the proper liability  
6 to the proper consumer's report, if you will.

7 So a credit report is not a document that's sitting in  
8 a filing cabinet somewhere and when someone asks for it, the  
9 credit bureau gets it out of a filing cabinet and gives it  
10 to a lender.

11 A credit report is actually a pool of information. And  
12 when someone asks for someone's credit report from one of  
13 the credit bureaus, the bureaus will use matching logic and  
14 find information in the pool that they believe belongs to a  
15 consumer using the consumer's identification information.

16 And they will actually compile this into what we  
17 commonly refer to as the credit report and then deliver it  
18 to the lender.

19 Q. Okay. So when you're talking about liability for an  
20 account and that's why you need to make sure you have the  
21 personal information right, --

22 A. Yeah.

23 Q. -- is that relevant in any way to one of the dispute  
24 codes that we've been talking about in this case, the 001  
25 code?

John Ulzheimer - Direct (Manning)

164

1 A. Yeah. That's the "not his or hers" code.

2 Q. What does that code mean?

3 MR. NOLAN: Your Honor, I'm going to object  
4 because this is going beyond the scope of his report. He  
5 didn't have any opinions in his five opinions offered in his  
6 report regarding dispute codes from a consumer.

7 THE COURT: Response, counsel.

8 MR. MANNING: Yes, he did, Judge. I have the  
9 report. I'm happy to hand it up.

10 THE COURT: Well, point it out to Mr. Nolan. If  
11 you all need to come up and let me read to you, I'm happy to  
12 do that.

13 MR. NOLAN: Your Honor, I withdraw my objection.

14 THE COURT: All right. Let's proceed, please.

15 THE WITNESS: Can I get you to repeat your  
16 question? I'm sorry.

17 BY MR. MANNING:

18 Q. No, I'm sorry for the interruption. What I was asking  
19 you about is this dispute code 001.

20 A. Okay.

21 Q. That -- you told me it means "not his/not hers." How  
22 is that dispute code used in the industry?

23 A. So that dispute code and every dispute code, not just  
24 the 001, "not his or hers" dispute code, the intent of that  
25 code is to essentially focus not only the credit bureau but

John Ulzheimer - Direct (Manning)

165

1 also the lender, or what is commonly referred to as the  
2 furnisher, the company that furnishes information to the  
3 credit bureaus on a certain aspect of the dispute that the  
4 consumer has communicated to the credit bureaus.

5 And, so, really what it's meant to do is to optimize or  
6 streamline the dispute such that everyone is focused on the  
7 same aspect of dispute. So in the "not his or hers"  
8 example, if the consumer tells a credit reporting agency,  
9 "Hey, this account isn't mine, please investigate it," the  
10 credit bureau will then homogenize that disputed language  
11 into this code "not his or hers" because that's what the  
12 consumer is asking them to investigate.

13 And then the credit bureau will then communicate that  
14 code on a form called an ACDV, or an Automated Consumer  
15 Dispute Verification form. They will communicate that code  
16 on that form to the furnishing party, essentially asking  
17 them, "Look, we have a dispute from a consumer. He or she  
18 is saying that this item is not his or hers. We want you to  
19 investigate that aspect of the account. Get back to us when  
20 you're done with your investigation."

21 So the code essentially guides not only the credit  
22 bureau but the furnishing party to investigate the item that  
23 the consumer is actually objecting to.

24 Q. What -- when that code is on there with the  
25 instructions "please confirm ID," what, what does that, what

John Ulzheimer - Direct (Manning)

166

1 does that require the furnisher to do?

2 MR. NOLAN: Objection, Your Honor. Can we  
3 approach on this issue?

4 THE COURT: Yes, sir.

5 (Bench conference on the record)

6 THE COURT: Mr. Nolan.

7 MR. NOLAN: Your Honor, the expert report contains  
8 five specific opinions on how a report determines a score,  
9 on potential damages in his claim, and he has rebuttal on  
10 Mr. Hendricks's report about the XB codes marking rebuttal  
11 about the claim that two tradelines were furnished, and  
12 rebuttal about the credit tape never showing correct data.

13 He never offers anything on investigation, on what a  
14 dispute code is intended to convey, or what actually a  
15 furnisher is expected to do once it receives the  
16 investigation or any specifics regarding using any  
17 investigation in this case.

18 THE COURT: Mr. Manning, response.

19 MR. MANNING: Judge, this is the third objection.  
20 On Page 11 it specifically --

21 THE COURT: I don't need to see it. Tell me what  
22 it says and lower your voice.

23 MR. MANNING: It specifically says dispute code  
24 001 refers to a situation where the consumer says "not  
25 his/not hers, provide or confirm complete ID." And it goes

John Ulzheimer - Direct (Manning)

167

1 on to talk about the dispute codes. So, I mean, I don't --  
2 there's no basis for the objection.

3 THE COURT: Okay. Mr. Nolan.

4 MR. NOLAN: Your Honor, in this case he's not  
5 offered any opinions on the investigatory process. He's  
6 offered a broad outline about when a consumer sends a  
7 dispute to a CRA. The CRA sends a code such as 001 to the  
8 furnisher. The furnisher responds to that code.

9 The specifics he's getting into are well beyond the  
10 scope of his report that he offered in this case and he's  
11 never supplemented.

12 THE COURT: Given what I heard the statement of  
13 the witness to be thus far, or the question, I'm going to  
14 overrule the objection. And I want a copy of this that I  
15 can keep up here. I preserve the plaintiff's objection and  
16 exception.

17 (Bench conference concluded)

18 MR. MANNING: May I proceed, Judge?

19 THE COURT: If someone gets me an extra copy of  
20 the report.

21 MR. MANNING: You can have mine. I don't have  
22 another copy.

23 THE COURT: Well, if you need it to examine the  
24 witness with, I don't want that. I just wanted a copy to  
25 have so that when these objections come I have something

John Ulzheimer - Direct (Manning)

168

1 before me that I can read. If that's your only copy, that's  
2 fine.

3 MR. MANNING: Judge, I'll give this one to you.

4 BY MR. MANNING:

5 Q. You were talking about the 001 code and the question  
6 was what does that code instruct the furnisher to  
7 investigate?

8 A. The -- excuse me -- the 001 code is a liability dispute  
9 for claiming that it's not their account. And in order for  
10 the credit reporting agency to complete their obligation to  
11 perform a reasonable investigation, they're essentially  
12 asking the furnishing party to determine if the  
13 identification that they have associated with the liability  
14 actually matches what is on the consumer credit report;  
15 practically speaking, is the account really his or hers or  
16 is it not.

17 Q. Does it instruct the furnisher to investigate anything  
18 other than that?

19 A. The 001 code? No, it's specific to "not his/not hers,"  
20 the liability dispute.

21 Q. So any of the other fields on the ACDV that aren't  
22 relevant to 001, are those relevant to the instruction of  
23 the code?

24 A. No. They're actually outside of the relevance of the  
25 code.

John Ulzheimer - Direct (Manning)

169

1 Q. When the furnisher responds to that ACDV with complete  
2 identification, is it verifying any of the other material on  
3 that ACDV?

4 A. No.

5 Q. Why not?

6 A. That's not what it was asked to do. It was asked to  
7 verify and investigate if this person is actually liable for  
8 this account or not.

9 Q. Now, the, the other code you mentioned was an XB code.

10 A. That's right.

11 Q. What is, what is that code for?

12 A. So the XB code is what's formally known as a compliance  
13 condition code. If you haven't figured it out by now,  
14 credit reports are all code, and different codes mean  
15 certain things.

16 A compliance condition code, or specifically the XB, X  
17 as in -- actually B as in boy -- compliance condition code  
18 is added to a credit report entry when the consumer is  
19 disputing it and it's actively under investigation.

20 So, again, from a chronology perspective, if a consumer  
21 files a dispute with a credit reporting agency, the credit  
22 reporting agency adds the XB code to the item in dispute so  
23 that while the item is being investigated, if any future  
24 credit reports are pulled, whoever pulls it sees that that  
25 particular item is in dispute and actively being

John Ulzheimer - Direct (Manning)

170

1 investigated.

2 Q. Do you recall reviewing any documents in which Ocwen  
3 furnished data on its monthly data tape to any of the credit  
4 bureaus with an XB code on it?

5 A. Yes.

6 Q. What, what documents do you recall seeing?

7 A. They were the screen captures of the monthly reporting  
8 for the Ocwen account. And there was a -- I think it's --  
9 it either said compliance condition code or CCC and there  
10 was a little arrow with a drop-down menu where you could  
11 select a code. And some of those did, in fact, have the XB  
12 code filled into the field.

13 MR. MANNING: Your Honor, may I approach?

14 THE COURT: Yes, sir.

15 BY MR. MANNING:

16 Q. Mr. Ulzheimer, I'm handing you what's been marked as  
17 Defendant's Exhibit 2.

18 A. Okay.

19 Q. Are you familiar with that document?

20 A. Yeah. These are the screen captures I just referred  
21 to.

22 Q. Okay. So you identified that there were screen  
23 captures with an XB code, and that XB code means what?

24 A. That the item is actively in dispute and being  
25 investigated.

John Ulzheimer - Direct (Manning)

171

1 Q. Now, what's the significance of the XB code for credit  
2 scoring purposes?

3 A. So while an item has the XB code associated with it,  
4 the credit scoring system, all of them, FICO, the FICO  
5 brand, the Vantage score brand, which are -- those are  
6 really the only, only two credit score brands that are used.

7 The credit scoring system will not consider the payment  
8 history or the balance associated with that account. The  
9 reason that FICO and Vantage score chose to treat an item in  
10 dispute like that is because they did not want the item to  
11 be considered while there was a possibility that it could be  
12 modified or changed because of the investigation process.

13 And, so, they essentially protected the consumer's  
14 score from being possibly affected by the entry by ensuring  
15 that they didn't consider the payment history aspect of the  
16 account which would include things like late payments, past  
17 due balances, any sort of narrative language that indicates  
18 non-performance on the account, and then the debt related to  
19 the accounts; in other words, whatever the balance is.

20 Q. So as long as the, the furnisher is reporting that XB  
21 code on that month, then it's telling the credit bureaus,  
22 "Don't consider any negative information for scoring this  
23 account."

24 A. Negative information or debt information for scoring  
25 purposes. That's right.

John Ulzheimer - Direct (Manning)

172

1 Q. So when you say for scoring purposes, does that also  
2 mean it's not being utilized by creditors for purposes of  
3 credit applications?

4 A. Well, the -- even though the item is in dispute and  
5 being investigated, it's still physically on the credit  
6 report. It's just that any score that the lender would  
7 consider while it's being investigated wouldn't consider  
8 that item.

9       This has become problematic in some instances because  
10 the credit -- lenders know that the score doesn't consider  
11 items that are in dispute. So you actually run into  
12 scenarios where lenders will not underwrite an account while  
13 things are in dispute because they recognize that the score  
14 may not be actually a valid score because it's not  
15 considering aspects of the account any longer.

16 Q. And you reference in your report the months in which  
17 Ocwen was furnishing data with the XB code on it.

18 A. That's right.

19 Q. We also want to talk about the -- I'm sorry. I don't  
20 want to get too bogged down in documents yet.

21 A. Okay.

22 Q. Do you recall also talking about the "date opened"  
23 field on the monthly data?

24 A. Yes.

25 Q. What is the significance of the "date opened" field as

John Ulzheimer - Direct (Manning)

173

1 to the, what happened in this matter?

2 A. Well, Ocwen changed or corrected the date opened.

3 Apparently, it was incorrect. It was actually opened in a  
4 different month in 1999 than was on the credit report.

5 And it appears that when Ocwen sent the correction to  
6 Equifax, instead of overlaying the incorrect date opened  
7 with a correct date opened and just simply leaving the  
8 account as one account, it appears Equifax duplicated the  
9 account leaving a -- what's referred to as either a dupe or  
10 duplicative account on the report in addition to the one  
11 account that Ocwen reported.

12 And you can tell the difference. One had the correct  
13 date opened and one had the incorrect date opened. So the  
14 significance of the date opened issue, essentially it's the  
15 core issue and, frankly, why we're here today because that's  
16 what really created this duplicate account.

17 Q. Now, the, the duplicate account -- so Ocwen makes a  
18 correction to somebody else's data about the account and  
19 tells the three credit bureaus to fix it?

20 A. That's right.

21 Q. Did the credit bureaus fix it?

22 A. It appears two of the three did. It looks like  
23 TransUnion and Experian didn't have an issue with what's  
24 kind of a garden variety change to an entry. But it appears  
25 that Equifax systemically -- something happened and it

John Ulzheimer - Direct (Manning)

174

1 created that duplicate account.

2 Q. What is the significance of the fact that two of the  
3 three national credit bureaus got it right and Equifax  
4 didn't?

5 A. Well, the, the significance is this was not something  
6 that Ocwen did just sending incorrect information to  
7 Equifax. This was something that they did in the normal  
8 course of business.

9       Lenders and furnishers do this all the time making  
10 proactive changes to the information on credit reports. And  
11 when you send the same essentially update order to all  
12 three -- or it actually may have been all four of the credit  
13 reporting agencies -- and two of the three or three of the  
14 four had a non-issue with it, yet the last one had a problem  
15 with it, it kind of underscores the, where this issue  
16 actually came from.

17 Q. We've talked a lot about different roles during this  
18 trial. What are Equifax's responsibilities when they  
19 receive that monthly data?

20 A. So when Equifax receives the monthly data -- and, and  
21 this normally comes in a tape. So think of a gigantic,  
22 looks like a big eight-track tape for those of you who  
23 remember what those look like. And essentially that's what  
24 it is is the furnisher will cut three of these identical  
25 tapes and send them to the three credit reporting agencies.

John Ulzheimer - Direct (Manning)

175

1 And then that's where their ability to control this process  
2 ends because now the credit reporting agencies now have this  
3 tape.

4 And, so, they will essentially schedule the upload of  
5 the information on that tape. And, you know, for lack of a  
6 better analogy, they'll, they'll put the tape into their  
7 system and hit "run" and they will upload this information  
8 and it will generally overlay the prior month's information.

9 And this is something that's a common occurrence across  
10 thousands and thousands of lenders. It occurs on a monthly  
11 basis and has -- the process pre-dates me. So this is the  
12 process that's been around for over 25 years.

13 Q. And once that data is received, then what does Equifax  
14 do with it?

15 A. Say that again.

16 Q. Once that monthly data is received from a furnisher,  
17 what does Equifax do with it?

18 A. So they will, they will run it into their system which  
19 normally overlays the prior month's update. And they  
20 actually have an audit team. And the audit team will look  
21 for meaningful variances in the information, meaning if last  
22 month you sent us a million accounts, this month you sent us  
23 15 million accounts, those two don't make, necessarily make  
24 sense.

25 So they're just looking for variances that don't make a

John Ulzheimer - Direct (Manning)

176

1 lot of sense so that they can question or audit the  
2 furnisher as to why the data tape this month looks so  
3 different to the data tape from the prior month.

4 Once the data is run into their, into their main  
5 frames, it just becomes part of this pool of credit file  
6 data that's just essentially waiting for a future lender to  
7 ask for a credit report so it can be compiled onto someone's  
8 report and then used for underwriting. And this happens  
9 generally once every statement cycle period which is usually  
10 once every 30 days.

11 Q. So the monthly data that Ocwen is sending in, is there,  
12 is there one set of that or are there two sets of it?

13 A. I'm not sure I understand. Meaning do they send one to  
14 Equifax and a different one to TransUnion or --

15 Q. Correct.

16 A. Okay. No. Lenders will send in an identical tape to  
17 all the credit reporting agencies that they choose to report  
18 to. Most, most lenders report to all three of the big  
19 credit bureaus. So they'll essentially make a carbon copy  
20 of the same tape and send it to all three.

21 Q. Did Ocwen ever furnish data on more than one account  
22 for Mr. Daugherty?

23 A. Not in any of the records that I saw.

24 Q. And the, the monthly records that you have in front of  
25 you are the, the relevant documents for this matter; right?

1 A. That's correct.

2 Q. Are there any issues in the monthly data that Ocwen is  
3 sending to these three credit bureaus? Anything wrong with  
4 them?

5 A. No. They're in the standard reporting language, a  
6 language called Metro. It's in the standard language. It  
7 has the same fields that we see on a credit report.

8 Q. So what happened? Why did Equifax keep reporting a  
9 duplicative tradeline when Ocwen is telling them there's  
10 only one?

11 A. Well, Ocwen didn't know there were two accounts.  
12 That's, that's the problem. So -- and, and this issue with  
13 Equifax is a systemic issue, meaning that now we have two  
14 accounts associated with one consumer when in reality  
15 there's only one account associated with that one consumer  
16 from this particular lender.

17 And, you know, for better or for worse, Equifax isn't  
18 aware of this issue. And, so, therefore, they're not doing  
19 anything about the issue. Ocwen is not aware of it because  
20 they certainly didn't report two accounts to Equifax. So  
21 they don't even know that it's an issue.

22 And, so, unless someone raises their hand and says,  
23 "Wait a minute, I only have one account with Ocwen, not two  
24 accounts, you have a -- there's something wrong with your  
25 credit report, you need to fix it," then really it just kind

John Ulzheimer - Direct (Manning)

178

1 of perpetuates until someone raises their hand and asks that  
2 it be addressed.

3 Q. What is the industry standard way of reporting a  
4 duplicative tradeline?

5 A. It, it shows up twice on the same credit report. And  
6 if you look at it with the human eye, you can see pretty  
7 clearly that it's the same thing.

8 Q. Now, that's when someone like Mr. Daugherty has the  
9 credit report?

10 A. That's right.

11 Q. Are you aware of whether Ocwen ever received  
12 Mr. Daugherty's credit report?

13 A. I am not.

14 Q. Of all those documents you listed off to the jury, you  
15 haven't seen anything in there that suggests Ocwen ever knew  
16 or received that information?

17 A. That's correct.

18 Q. Now, Mr. Daugherty had it but he never provided it to  
19 Ocwen.

20 A. That -- well, if he had, then Ocwen would have known  
21 that there were two accounts.

22 Q. So had someone known about the duplicative tradeline  
23 and actually said, "Hey, this is a duplicative tradeline,"  
24 how should Equifax have notified Ocwen about that?

25 A. They never would have.

John Ulzheimer - Direct (Manning)

179

1 Q. Why not?

2 A. Equifax actually has written policies on how to deal  
3 with duplicative accounts on a consumer's credit report.  
4 And that policy essentially -- the policy is that they won't  
5 even contact the furnisher. They'll just unilaterally  
6 remove one of the two accounts themselves without even  
7 involving the furnishing party.

8 MR. NOLAN: Your Honor, I object to this question  
9 because this is clearly not in the report about Equifax's  
10 policies and procedures disclosed by Mr. Ulzheimer.

11 THE COURT: Response?

12 MR. MANNING: It is, Judge. It's referenced in  
13 his report among the contents.

14 THE COURT: Here's your copy. If you will direct  
15 me to it, I will look.

16 MR. MANNING: It's Exhibit C, the last page,  
17 Judge. Thank you for making a copy.

18 Toward the bottom of the page you'll see that  
19 Mr. Ulzheimer identified EIS 1 through 1,092 of all the  
20 documents Equifax produced. And the policy appears within  
21 that document and it has duplicative trade accounts and it's  
22 EIS 542, 543. And it specifically addresses the duplicative  
23 trade accounts.

24 MR. NOLAN: Your Honor, there's no opinion offered  
25 in the entire report. There's a document cited at the end

John Ulzheimer - Direct (Manning)

180

1 of his report as something he reviewed, but there's no  
2 opinion on those documents inside his report.

3 THE COURT: What's in the document? In other  
4 words, gentlemen, I want to be fair. This is a similar  
5 situation that we had with the plaintiff's expert where  
6 there was a list on the back and I allowed him to testify  
7 about that.

8 I don't know what's in the document such that I can  
9 compare it to the testimony of the witness, but I'm happy to  
10 do that if that's what you're asking, Mr. Nolan.

11 MR. NOLAN: No, Your Honor. I would concede that  
12 the document was probably contained in those documents. But  
13 what we're objecting to is the fact that he didn't opine on  
14 that in his report at any point.

15 THE COURT: Anything further?

16 MR. MANNING: Judge, you've already ruled on the  
17 issue of an expert being permitted to testify to things  
18 that, like the Equifax ACDVs with Mr. Hendricks that he  
19 hadn't talked about or identified. This is actually  
20 identified in the report.

21 THE COURT: Well, it's identified as his having  
22 relied on it. Do you have a copy of the document?

23 MR. MANNING: Yes, Your Honor.

24 THE COURT: All right. I am looking at the  
25 document which contains Bates stamp -- I'm going to refer to

John Ulzheimer - Direct (Manning)

181

1 it, counsel, as 542.

2 And in it, Mr. Nolan, it has information, if not exact,  
3 similar to what the witness has just testified to. And, so,  
4 I don't see it as an opinion but a repetition of what's  
5 contained in this document.

6 MR. NOLAN: Yes, Your Honor.

7 THE COURT: For that reason, I overrule the  
8 objection.

9 BY MR. MANNING:

10 Q. I'm going to hand you what was just being reviewed. It  
11 is EIS 542 and 543.

12 A. Okay.

13 Q. And can you identify what that document is?

14 A. Yes, sir. This is -- well, it's three pages out of the  
15 Equifax, what's referred to as the indicating manual. And  
16 "indicating" at Equifax means dispute manual.

17 And this particular -- these particular three pages  
18 refer specifically to Equifax's policies and practices  
19 regarding duplicate trade accounts or duplicate credit  
20 report entries.

21 Q. Now, there's a third page, if you could look at that.  
22 I'm sorry the print is small, but in the bottom right-hand  
23 corner you'll see there's another Bates stamp. What's that  
24 one?

25 A. EIS Daugherty 512.

John Ulzheimer - Direct (Manning)

182

1 Q. Thank you. And what is that document?

2 A. This is the Table of Contents of that manual.

3 Q. And it identifies specifically in the Table of Contents  
4 "duplicative trade accounts"?

5 A. On Page IND018 is a section titled "duplicate trade  
6 accounts."

7 Q. So this indicates that this isn't an uncommon thing  
8 that happens in the industry, so much so that Equifax has a  
9 policy specifically on it?

10 A. We had a policy when I worked there about it. And  
11 that's, you know, in the early '90s. This manual is from  
12 2004, which is 12 years ago.

13 Duplicate trade accounts are not as common as, say, you  
14 know, catching a cold. But they're common enough that the  
15 credit bureaus have policies regarding how to deal with  
16 them.

17 Q. Despite this policy, Equifax didn't delete the  
18 duplicative tradeline?

19 A. That's correct.

20 Q. Why not?

21 A. They never were made aware -- well, they were never  
22 made aware that there was a duplicative tradeline. So the  
23 policy is -- the way a policy is written is how they will  
24 react when they're notified that there is a duplicative  
25 tradeline.

1       And, so, because they were never notified or put on  
2 notice that there was a duplicative tradeline, they couldn't  
3 react and, therefore, deploy this policy.

4 Q.     How would they have been informed by Mr. Daugherty that  
5 there was this duplicative tradeline?

6 A.     Through the standard consumer dispute resolution  
7 process, which generally means that the consumer contacts  
8 the credit bureau, you know, one of a variety of ways,  
9 either on the phone or through the mail or through the  
10 internet and actually identifies an error on their credit  
11 reports and explains why they believe that it's wrong.

12 Q.     You've reviewed all the documents that the plaintiff  
13 provided that are listed in your report; right?

14 A.     Yes, sir.

15 Q.     At any point did Mr. Daugherty ever identify a  
16 duplicative tradeline?

17 A.     I did not see anything that referenced duplicative  
18 tradeline, no, sir.

19 Q.     Mr. Daugherty sent letters to Equifax. Equifax  
20 received those letters. How did Equifax determine what  
21 codes to put on the ACDV responses?

22 A.     So Equifax will -- once they receive a dispute  
23 communication, whether it's on-line or through a telephone  
24 call or through the internet, they will use their judgment  
25 and essentially homogenize the communication from the

John Ulzheimer - Direct (Manning)

184

1 consumer into what they believe the dispute to be. And  
2 that's how they'll convert a letter or a conversation into  
3 all of these dispute codes.

4 Q. So in this case we're -- what dispute codes were used?

5 A. So I saw two that showed up. And I don't have the  
6 library of ACDVs committed to memory. But if, if I remember  
7 correctly, the 001 dispute code was commonly present which  
8 is the "not his or hers." And then a 007 code which on some  
9 documents showed up as an 016 code. The language of the  
10 code is identical, however. And that particular code  
11 disputes three specific fields on the credit report.

12 And I don't recall what they are off the top of my  
13 head. I think account status is one. Payment history may  
14 be the other. And, so, those are the two that I saw on, on  
15 every dispute related communication.

16 Q. And you've already told us about the 001 as instructing  
17 the furnisher to check the ID. What do those three specific  
18 fields of the 106 or 007, what does that instruct the  
19 furnisher to review?

20 A. It instructs the furnisher to investigate the three  
21 specific fields that are identified in that particular  
22 dispute code.

23 Q. What about other, in other fields? Is the furnisher  
24 required to respond to those?

25 A. That would be outside of what the consumer has asked

John Ulzheimer - Direct (Manning)

185

1 them to investigate.

2 Q. So whose responsibility is it to respond to the code  
3 that's received?

4 A. Well, the --

5 MR. NOLAN: Your Honor, I'd object again because  
6 this is going right to the issue we discussed at the bench.  
7 It's outside the scope of Mr. Ulzheimer's report.

8 THE COURT: In terms of the question of the  
9 responsibility, whose responsibility it is to respond to the  
10 code?

11 MR. NOLAN: Your Honor, I believe it goes directly  
12 to the reasonableness of any investigation that would be  
13 done after that point. And that's an issue that  
14 Mr. Ulzheimer did not opine upon in his report.

15 THE COURT: Response, counsel?

16 MR. MANNING: Judge, you have the report. I  
17 welcome you to read it.

18 THE COURT: Just direct me to the page.

19 MR. MANNING: Yes. So first on Page 11, Paragraph  
20 5.

21 THE COURT: Anything further, Mr. Nolan? Numbered  
22 5 on Page 11 to the top two paragraphs on Page 12.

23 MR. NOLAN: Your Honor, the page appearing on  
24 section 5 gives a general overview of the dispute process.  
25 It does not mention a 007 dispute or what a furnisher is

John Ulzheimer - Direct (Manning)

186

1 tasked with doing once it receives a specific dispute such  
2 as that.

3 THE COURT: All right.

4 MR. NOLAN: It talks generally about how long a  
5 data furnisher has to respond to that and to fill out the  
6 response portions of the ACDV regarding that. It doesn't  
7 have any specifics about any directions from the CRA at that  
8 point.

9 THE COURT: Mr. Manning, you were going to point  
10 me to another section.

11 MR. MANNING: No, Judge, that's the section where  
12 it talks about who's doing what.

13 MR. NOLAN: And what's more is that section offers  
14 no opinion as to who was supposed to do what once these  
15 disputes are traded.

16 MR. MANNING: And my response, Judge, is he's  
17 describing the process.

18 THE COURT: When I look at Numbered Paragraph 5 on  
19 Page 11 of the expert report of Mr. Ulzheimer, it does, in  
20 fact, describe the process. It describes what the parties  
21 involved in the process do.

22 And I do not believe as I look at this response,  
23 Mr. Nolan, that it's any different. I want to review it  
24 again.

25 (Pause)

John Ulzheimer - Direct (Manning)

187

1                   THE COURT: All right. I'm looking here at the  
2 answer and the question regarding responsibility. And,  
3 again, I believe that it's a general discussion in keeping  
4 with what I see here on Page 11 as opposed to an opinion in  
5 this particular case, Mr. Nolan.

6                   MR. NOLAN: Yes, Your Honor.

7                   THE COURT: I preserve the plaintiff's objection  
8 and exception to my ruling and overrule it.

9                   Go ahead, please.

10                  MR. MANNING: I'm sorry, I don't recall the  
11 question.

12                  Ms. Court Reporter, could you read it back?

13                  THE COURT: I think the last question was -- I'm  
14 sorry. Go ahead.

15                  (The court reporter read back the previous question,  
16 after which the following occurred:)

17                  THE WITNESS: The furnisher is responsible for  
18 responding to the code. They're, in fact, the only party  
19 that receives the code.

20 BY MR. MANNING:

21 Q. And when they receive that code, what are they  
22 responsible for doing about it?

23 A. Well, they're investigating -- their entire  
24 investigation is directed by the code. The code is the  
25 point guard. It essentially tells them "confirm ID."

John Ulzheimer - Direct (Manning)

188

1 Confirm the balance. Confirm whether or not this account  
2 was late."

3 Whatever the consumer is objecting to on his or her  
4 credit report generates the code. And the code directs the  
5 furnisher to investigate what the consumer finds  
6 objectionable about the credit reporting.

7 Q. Here the, the dispute codes that you've identified, at  
8 no point was there ever identification by Equifax, the  
9 credit bureau, reporting this error that there was a  
10 duplicative tradeline or any other way of saying those  
11 words, "duplicative tradeline"?

12 A. That's right.

13 Q. So what responsibility did Ocwen have regarding  
14 Equifax's mistake?

15 A. I would suggest they never knew about it. No one,  
16 including Equifax, ever brought it to their attention. And,  
17 frankly, if, if you -- back to the Equifax dispute  
18 resolution manual, if someone would have bought it to  
19 Equifax's attention, their policy straight out of their  
20 manual is to not even involve the furnishing party. It's  
21 just to unilaterally delete one of the two on their own.

22 Q. And Equifax had a policy to do that?

23 A. That's the policy we talked about a few minutes ago.

24 Q. So we've, we've talked about this reasonable  
25 investigation concept. What is a reasonable investigation?

John Ulzheimer - Direct (Manning)

189

1 A. So that's a tricky one. Reasonable does not have a  
2 definition.

3 MR. NOLAN: Your Honor, I object at this point.  
4 Again, there is nothing in his report about an  
5 investigation, what constitutes a reasonable investigation.  
6 And the attempt to bring this in as a back door through  
7 general practices of what a credit dispute is is improper.

8 THE COURT: Response to the fact that he has been  
9 asked what is a reasonable investigation which is asking for  
10 an opinion, counsel? Any response to that objection?

11 MR. MANNING: Yes. Judge, I was just asking this  
12 expert to identify in the industry what is considered to be  
13 a reasonable investigation.

14 THE COURT: Well, that's an opinion and it does  
15 not appear to be listed as one of his opinions. Anything  
16 further you have on that issue?

17 MR. MANNING: I would just like the expert -- not  
18 to apply it to this case, just to be able to explain in the  
19 industry what a reasonable investigation is.

20 THE COURT: All right. I sustain the objection,  
21 finding that that would be an opinion on his part that does  
22 not appear from what I'm seeing here to have been disclosed,  
23 Mr. Manning. I preserve the defendant's objection and  
24 exception to that ruling.

25 BY MR. MANNING:

John Ulzheimer - Direct (Manning)

190

1 Q. When Ocwen receives a dispute -- you've reviewed the  
2 various ACDV responses; right?

3 A. Correct. That's right. I have.

4 Q. And you've seen all the responses?

5 A. I have.

6 Q. You've seen the codes and what Ocwen responded with?

7 A. I've, I've seen them, yes.

8 Q. And when Ocwen responded, do you believe they did  
9 anything wrong?

10 A. I do not.

11 Q. Why not?

12 A. Because they were directed to investigate certain  
13 aspects of the credit reporting --

14 MR. NOLAN: Your Honor, I object.

15 THE COURT: There is an objection.

16 MR. NOLAN: I'm sorry.

17 THE COURT: Go ahead, please.

18 MR. NOLAN: He's asking a direct question --

19 THE COURT: When you hear an objection, I need you  
20 to --

21 THE WITNESS: Be quiet. Okay. Sorry about that.

22 THE COURT: No apology necessary.

23 MR. NOLAN: Your Honor, that's a direct question  
24 about the investigation that took place in this case. And  
25 there's, once again, no opinions on anything that Ocwen did

John Ulzheimer - Direct (Manning)

191

1 to investigate plaintiff's dispute.

2 THE COURT: Or whether or not they did anything  
3 wrong. Is that your position? That's the question as I  
4 understood it or heard it.

5 MR. NOLAN: Your Honor, my, my objection relates  
6 solely to testimony regarding the investigation. If he has  
7 an opinion about whether they furnished information in the  
8 credit score or otherwise, that's a separate matter than the  
9 issues that he did not provide an opinion on which is  
10 relating to Ocwen's investigation in this case.

11 THE COURT: Not intending to argue with you,  
12 Mr. Nolan. Is it your position that the question which I  
13 believe was whether or not they did anything wrong goes to  
14 the investigation? Is that what you're saying or not?

15 MR. NOLAN: Yes, Your Honor.

16 THE COURT: All right.

17 Mr. Manning, response?

18 MR. MANNING: Your Honor, I'm not dealing with the  
19 investigation. I'm dealing with the facts of what Ocwen  
20 responded with which is disclosed in his report as the  
21 contents of the materials that he relied upon.

22 THE COURT: And with respect to the opinion as to  
23 whether or not Ocwen did anything wrong, does, is that  
24 included from your perspective in his report?

25 MR. MANNING: Yes, Judge.

John Ulzheimer - Direct (Manning)

192

1                   THE COURT: All right. And point it out to me.

2                   MR. MANNING: Judge, the, the report talks about  
3 all the information that he reviewed in preparation. And it  
4 discusses all the responses. And there is a discussion  
5 about how Ocwen responded with adequate information.  
6 Specifically, it references the codes that were utilized on  
7 the ACDVs.

8                   THE COURT: All right.

9                   MR. MANNING: If you'd like me to rephrase, I can  
10 try to do that.

11                  THE COURT: I'm looking at his opinions which he  
12 has indicated that he will give. The response to a question  
13 as to whether or not they did anything wrong certainly gives  
14 an opinion from the witness's perspective as to whether or  
15 not they did what they were supposed to do for purposes of  
16 the jury's consideration.

17                  I don't see that opinion here. I see other opinions,  
18 but I do not see that. And if you, again, want to point it  
19 out to me, I'm happy to consider it.

20                  MR. MANNING: Judge, why don't I try to rephrase  
21 it?

22                  THE COURT: All right.

23                  Your objection to the question on the floor is  
24 sustained, Mr. Nolan.

25                  You go forward, Mr. Manning.

John Ulzheimer - Direct (Manning)

193

1           If there are additional objections, I will hear them.

2 BY MR. MANNING:

3 Q. You're aware of, as I was saying, all the ACDVs and how  
4 they came in with dispute codes and how Ocwen responded to  
5 them?

6 A. Yes.

7 Q. Are there codes that Ocwen received in the form of a  
8 dispute that directed it to do anything other than what it  
9 did?

10 A. No.

11 Q. In terms of what Ocwen responded with, are there things  
12 that it should have done differently?

13 A. I don't believe so.

14 Q. Why not?

15 A. The responses were specific to the codes which direct  
16 the -- communicate the consumer dispute and direct the  
17 investigation.

18 Q. Now, I'd like to ask you about the credit report  
19 concept. The credit report concept we've talked about  
20 generally. Now I'm going to get more specific.

21           When you talk about scoring -- and, again, I'd like you  
22 to give me the version I'll understand. What factors go  
23 into computing a credit score?

24 A. Okay. So a credit score only considers certain  
25 information off of a credit report, nothing external that's

John Ulzheimer - Direct (Manning)

194

1 not on a credit report.

2 So within the credit report, the information falls very  
3 cleanly into five separate categories. And these five  
4 separate categories have varying degrees of influence on the  
5 actual score. So I'll go from the most important to the  
6 least important.

7 Q. Can you give me a road map first? Like how many  
8 factors are you about to give me?

9 A. Five --

10 Q. Okay.

11 A. -- real quick.

12 Q. So we're going to start with number one first, most  
13 important.

14 A. Right. This is a payment history category which is  
15 really the presence or lack of derogatory information,  
16 period.

17 Q. I got it.

18 A. Okay.

19 Q. What's number two?

20 A. Number two is your debt load. So there's a variety of  
21 metrics that are underneath the category of debt.

22 Q. Got it.

23 A. Okay.

24 Q. Number three?

25 A. It's -- number three the category is called time and

John Ulzheimer - Direct (Manning)

195

1 file which is a fancy way of saying how old is your credit  
2 report.

3 Q. Got it.

4 A. Number four is the pursuit of credit which is the  
5 inquiry category, so a record of you actually going out  
6 there and making applications for credit.

7 Q. And fifth?

8 A. Diversity, meaning do you have experience managing  
9 different types of accounts or do you only have experience  
10 managing one type of an account.

11 Q. In your report you talk about -- this is on Page 12 --  
12 that no single item on a credit report determines a credit  
13 score.

14 A. That's right.

15 Q. So you've just given five factors that these credit  
16 scores utilize --

17 A. That's right.

18 Q. -- when they're computed. Do the different credit  
19 bureaus come up with different scores?

20 A. The credit reporting agencies, because the information  
21 on your three credit reports is different, it's not  
22 identical, will generally yield different scores if for no  
23 other reason than the fact that the data going into the  
24 scoring model is different across the three credit reporting  
25 agencies.

John Ulzheimer - Direct (Manning)

196

1 Q. I understand that. Now let's talk about the number one  
2 factor, payment history category. What information is  
3 considered for that number one category?

4 A. So it's basically the presence or lack of bad stuff.  
5 And that will include public record information. And  
6 there's only three public records that appear on a credit  
7 report; bankruptcy, tax lien, and judgments.

8 Next would be what's referred to as third-party  
9 collections.

10 Q. Are you giving me these in order of significance or --

11 A. No. I'm just giving you kind of the inventory of  
12 derogatory credit report entries.

13 Q. Got it.

14 A. Public records. The next is third-party collections.  
15 And if you don't know, a collection -- what a collection is  
16 is when someone defaults on some sort of loan or a service  
17 with a lender or service provider. They may outsource the  
18 collection process to a third-party company referred to as a  
19 collection agency. And the collection agency will then  
20 place that item on your credit report. And it shows up as  
21 what's referred to as a collection account.

22 So that's -- so public records and collections. And  
23 then you now have all of the information in the account  
24 section. And, so, that would include things like late  
25 payments, past due balances, repossessions, settlements,

John Ulzheimer - Direct (Manning)

197

1 charge-offs and defaults, accounts included in bankruptcy,  
2 short sales, foreclosures, anything that indicates that the  
3 account is not being paid on time.

4 So what I just gave you, those three things, is a  
5 pretty full and complete list of the, of the inventory of  
6 bad things that can end up on a credit report.

7 Q. Got it. And all those things fall into category number  
8 one?

9 A. Payment history.

10 Q. Most important. Okay. So, now, we've all heard about  
11 how Mr. Daugherty has one account with Ocwen that's being  
12 reported twice by only Equifax. One of them is perfect.  
13 The other one is wrong. Right?

14 A. Correct.

15 Q. Okay. So let's exclude that account for a moment.

16 A. Which one?

17 Q. The whole -- both.

18 A. All of it, okay.

19 Q. Just take them out. I only want to ask you now about  
20 the other stuff on Mr. Daugherty's credit report.

21 A. Okay.

22 Q. You've reviewed his credit report?

23 A. Yes.

24 Q. It was produced by Mr. Daugherty that he had in his  
25 possession and provided for this case?

John Ulzheimer - Direct (Manning)

198

1 A. Yes, sir.

2 Q. Now, do you recall the date of it?

3 A. I want to say April, 2014.

4 Q. It's on Page 12 of your report, Paragraph B, second  
5 paragraph.

6 A. Oh, okay, April, 2013. My apologies. No, no,  
7 April 17th, 2014. I was right.

8 Q. Okay.

9 A. Yeah.

10 Q. I'm going to hand you a document that is labeled  
11 creditscore.com report as of April 17th, 2014, David  
12 Daugherty.

13 A. Okay.

14 Q. Are you able to identify that document as the same  
15 document you're referencing in your report?

16 A. Yes, sir, I am. It is the same document.

17 Q. All right. So what, what was the state of  
18 Mr. Daugherty's credit as of that point in time?

19 A. It was, it was very poor.

20 Q. Okay. When you say very poor, let's just start high  
21 level scores and then you can tell me why that is. So let's  
22 start at the top. What are the scores and who are providing  
23 the scores?

24 A. Sure. So these scores are a part of the  
25 creditscore.com credit report which creditscore.com is an

John Ulzheimer - Direct (Manning)

199

1 Experian property. So this is actually an Experian product.

2 The scores associated with the -- and this is what's  
3 referred to as a tri-merge. So this is actually  
4 Mr. Daugherty's credit reports not only from Experian but  
5 also from TransUnion and from Equifax. So this is a  
6 360-degree view of Mr. Daugherty's credit reports because  
7 it's all of them.

8 So as such, there are three scores in this particular  
9 exhibit because there are, in fact, three credit reports.

10 On Page -- well, it's in a separate section called  
11 "credit score." So that's where I'm at right now.

12 Q. Okay.

13 A. There's a credit score of 561 at Experian, 564 at  
14 Equifax, --

15 Q. Hold on. Hold on. 561 Experian?

16 A. 564 at Equifax, 565 at TransUnion, or based on  
17 TransUnion data based on Equifax data based on Experian  
18 data.

19 Q. Okay. So those are the three scores that Mr. Daugherty  
20 had for his credit at that point in time from the three  
21 different major credit bureaus?

22 A. Correct.

23 Q. And those scores include the Ocwen duplicative issue  
24 with Equifax?

25 A. With just Equifax, not with the other two.

John Ulzheimer - Direct (Manning)

200

1 Q. Okay, because we're going to go into the other stuff on  
2 his report in a moment. But you're telling me that this  
3 report shows Mr. Daugherty's Experian score was actually  
4 lower than his Equifax score?

5 A. By three points, that's correct, yes.

6 Q. But I thought Equifax was reporting a dupe with a  
7 foreclosure.

8 A. They were.

9 Q. And that -- 120 days late?

10 A. Correct.

11 Q. Well, how could -- I mean, if that's so bad, how could  
12 Equifax be higher than Experian?

13 A. Again, no one item on a credit report determines a  
14 credit score. It's -- everything on a credit report goes  
15 into the scoring system.

16 And, so, Mr. Daugherty, outside of this duplicate  
17 account that showed up only on his Equifax credit report, on  
18 all three of his credit reports had a pretty extensive  
19 inventory of severely derogatory entries that have nothing  
20 to do with Ocwen which is why you see low scores even at the  
21 credit bureaus that did not have the duplicative Ocwen  
22 account.

23 Q. Okay. So Experian and TransUnion have it right.

24 Mr. Daugherty has no dispute with them. Equifax has it  
25 wrong but it's giving a higher score?

John Ulzheimer - Direct (Manning)

201

1 A. That's right. The data is generating a higher score,  
2 that's right.

3 Q. So what does that indicate to you about whether this  
4 issue caused any harm to Mr. Daugherty?

5 A. Well, certainly you, you can't say that it had any sort  
6 of meaningful influence on his credit scores because, A, his  
7 three credit scores are all within four points of each  
8 other. And that's -- in the credit scoring world, that's a  
9 meaningless difference in the numbers.

10 Yet, two of those credit reporting agencies had no  
11 record of the duplicative -- the foreclosure related  
12 account. And one of them did, and still there wasn't any  
13 sort of meaningful difference in the scores which goes to  
14 the opinion which is no one item is responsible for any  
15 consumer's credit score. It's the entirety of their credit  
16 report, even unrelated items such as payment history, debt,  
17 and then the other metrics that I mentioned.

18 Q. I understand. Now, I'd like to move from there into  
19 the more specific information about the other derogatory  
20 items on Mr. Daugherty's report which would explain why the  
21 scores were so low.

22 A. Okay.

23 Q. Now, let's just start high level again. What is the  
24 total number of the actual collection accounts?

25 A. So I counted 11 total collections.

John Ulzheimer - Direct (Manning)

202

1 Q. When you say "collections," what does that mean?

2 A. So a collection is a, is a credit report entry meaning  
3 it's a line item on a consumer's credit report. And a  
4 collection essentially memorializes some sort of default or  
5 severe delinquency with some service provider or lender who  
6 gave up trying to collect their money.

7 And, so, they outsourced that particular function to a  
8 company that specializes in collecting money that someone  
9 else is having a hard time collecting. And that's the  
10 collection agency.

11 And the collection agencies have long had the ability  
12 to place their accounts on the credit reports of all the  
13 credit reporting agencies.

14 So when one of them does that, they usually will do it  
15 and it will show up on the consumer's credit report as a  
16 line item that reads their name, so ABC collector or John's  
17 Collection Company. I'm making those up, obviously. But  
18 it's very easy to tell that it's some sort of collection  
19 account.

20 Q. So to make sure I understand that, the collection  
21 account is something that's actually been referred out to  
22 pursue the debtor about?

23 A. Correct, because he or she defaulted or is severely  
24 delinquent with some other original creditor or service  
25 provider.

John Ulzheimer - Direct (Manning)

203

1 Q. So I'm trying to figure out the significance of 11.  
2 Now, does it matter if you have two versus five versus ten?

3 A. Yes and no. Clearly, having more is not as good as  
4 having fewer. Having zero is better than having any number  
5 greater than zero obviously.

6 But the way the credit scoring system works is there is  
7 a prevalence metric meaning that you're actually penalized  
8 if you have a larger number of these entries than if you  
9 have a smaller number of the entries.

10 However, that's capped, meaning that while one is worse  
11 than zero and two is worse than one, eventually the category  
12 is five or more.

13 And, so, really it's not incrementally worse to have 50  
14 collections than it would be to have 40 collections. At  
15 some point the horse is dead. You can't kill the horse  
16 again.

17 So once you've exceeded that number, there's really no  
18 incremental harm being caused to the consumers for which is  
19 yet another explanation as to why these scores are  
20 essentially the same.

21 Q. So why -- at what point -- you said it hits a cap. At  
22 what point did Mr. Daugherty hit that cap?

23 A. It's a pretty low bar, meaning that once you have more  
24 than a couple of these major derogatory entries, you have,  
25 you have forfeited the points associated with that

John Ulzheimer - Direct (Manning)

204

1 particular metric within the category. And the fact that  
2 you may have five collections versus six really isn't any  
3 better.

4 And the evidence is right here in these scores. These  
5 scores are essentially identical, you know, save a few  
6 points. While one credit report, the Equifax one, you know,  
7 there is no dispute that it's got one additional item that  
8 isn't on the other two.

9 So you, you can't really -- and it's actually higher  
10 than one of the other scores that doesn't have it, which  
11 underscores why you can't simply look at it and say that's  
12 why I have a bad credit score.

13 Q. So what, what difference, if any, would the  
14 Equifax/Ocwen duplicative account make?

15 A. I would suggest that if you -- and this is based on my  
16 time at FICO. If you were to delete that account, my -- I  
17 believe the score would stay the same. And, in fact, I feel  
18 comfortable even going one step further and saying you could  
19 delete that account and several of the collections in the  
20 score would still stay the same because he's so far past  
21 that line that there isn't any sort of additional negative  
22 influence because there's just so many of those entries.

23 Q. And that's as of April, 2014, which is, which is just  
24 three months before July, 2014.

25 A. Yes. That's right, yeah, three months.

John Ulzheimer - Direct (Manning)

205

1 Q. Okay. Now, you also talk about tax liens.

2 A. Yes.

3 Q. Were there any tax liens on Mr. Daugherty's account?

4 A. There were two. That's correct.

5 Q. What were they for?

6 A. If memory serves, I believe one -- and I'm going to  
7 confirm this obviously.

8 If memory serves, I believe one was a state tax lien.

9 Let's see. Looks like one was for the State of West  
10 Virginia and one was for Wood County, the Wood County Court.  
11 And it appears those were the only two tax liens that  
12 appeared on his credit reports.

13 Q. Now, Mr. Daugherty talked about how at some point in  
14 time he, he paid tax liens and paid collections accounts.

15 A. Okay.

16 Q. What difference does that make to a credit score and  
17 the derogatory nature of those adverse reports?

18 A. Can I start with liens?

19 Q. Yes.

20 A. Okay. So when you, when you have a tax lien, it shows  
21 up on your credit report essentially as an open and active  
22 lien.

23 When a consumer pays the lien or settles with the  
24 taxing authority, a release of lien is filed. And most of  
25 the time if the credit reporting agencies are doing their

John Ulzheimer - Direct (Manning)

206

1 job, they will actually pick up the release and update the  
2 credit file accordingly to show that it has been released.

3 And, so, now we go from an open lien to a released tax  
4 lien. It doesn't -- just because it's released does not  
5 cause it to be removed from the credit report. In fact, the  
6 credit bureaus keep those for seven more years after they've  
7 been released. And a released tax lien is considered a  
8 derogatory entry just like an unreleased tax lien.

9 So from a scoring perspective, it still sees the item  
10 first off because it's still physically present. And,  
11 number two, it's still considered to be a derogatory item.  
12 Just because it has been paid doesn't mean that it never  
13 happened and doesn't mean that it was never bad.

14 Q. Now, the only exception to that is, for example, after  
15 the lawsuit was filed, Equifax removed both of the Ocwen  
16 accounts.

17 A. That's my understanding.

18 Q. Does that affect the derogatory nature?

19 A. Remember, the credit score and this -- the credit score  
20 only - there's no exception - only considers information  
21 that is on the credit report at the time that the score is  
22 calculated, not information that used to be on it or may be  
23 on it in the future, but is only on it as of the day that  
24 the score is calculated. And if there's information that is  
25 not on the credit report, then the credit scoring system

John Ulzheimer - Direct (Manning)

207

1 does not consider it.

2       Moreover, credit scores don't have a memory. They  
3 don't know, wait a minute, Mr. Daugherty had a tax lien a  
4 year ago but it's not on there today so I'm still going to  
5 consider the fact that it used to be there.

6       No, no, that's not how the scoring system works. It's  
7 very flat. It only looks at what's on the report today.  
8 And if it's not on the report, there is no influence.

9 Q.      Okay. So by virtue of the fact that Equifax deleted  
10 not only its duplicative tradeline but also the correct  
11 derogatory information that he had been late 120 days or  
12 more and in foreclosure back in 2012, what effect would that  
13 have on his credit?

14 A.     So they removed the duplicative, which is the one that  
15 had all the, the negative aspects associated with it. They  
16 also removed the one that I think everyone agrees is right  
17 and could still be on his credit report as of today.

18       So removing the negative item removes one of the  
19 negative events on his credit report. I haven't seen a  
20 score calculated with that particular variation of his  
21 credit report. You know, if I did, I could give you a  
22 pretty good idea of what the score would likely be.

23       But -- and this is something that I think is important  
24 as well. The credit scoring systems also consider the good  
25 stuff on your credit report. They don't just look for the

John Ulzheimer - Direct (Manning)

208

1 bad stuff to penalize you. They look for the good stuff to  
2 reward you.

3 And removing a good mortgage loan -- remember the  
4 diversity category where you have experience managing  
5 different types of accounts? Managing a mortgage is very  
6 different than paying your credit card because of the dollar  
7 amount involved usually.

8 So removing that aspect of a credit report essentially  
9 erases it from the consumer's history, meaning that any  
10 future credit score, any future lender that were to look at  
11 the report doesn't know that this gentleman had a performing  
12 mortgage for X number of years that he had it unless he  
13 tells them, "Wait a minute. I've got a mortgage that's not  
14 on my report."

15 But, generally speaking, it's actually more beneficial  
16 to have that on a credit report than it would be just to  
17 say, "We're just going to remove it."

18 Q. What does it indicate that is the reason why Equifax  
19 would have deleted both of those?

20 A. Well, clearly they would have deleted the duplicate not  
21 only because it's wrong. Mr. Daugherty didn't have two  
22 accounts. He had one account.

23 Number two, it's their policy to do so as per their  
24 manual. Why they would have removed the positive account,  
25 of course there's no obligation to do that in the law

John Ulzheimer - Direct (Manning)

209

1 because you can keep good stuff on a credit report forever.

2 That's generally the type of thing you see -- out of an  
3 abundance of caution, sometimes you see it in a settlement.  
4 They'll agree to just remove everything off the credit  
5 report just so they essentially wash their hands of ever  
6 having to deal with it again.

7 Q. Now, when you, when you talk about the good stuff  
8 staying on, I want to make sure I've got the categories in  
9 my mind. Collection accounts. How long does the negative  
10 information stay on?

11 A. So collections are always negative. They are never  
12 good. So a collection account is a negative entry.

13 And that particular negative entry -- and this is a  
14 little complicated. A collection can stay on a credit  
15 report legally for no longer than seven years from the  
16 default of the original account. Okay?

17 So if it took two years for it to get to a collection  
18 agency, the clock doesn't start then. It's only five more  
19 years because essentially it took two years to get there.  
20 So no more than seven years from the date of the original  
21 default.

22 Q. Okay. Now, that collections -- was the Ocwen account  
23 in collections?

24 A. No. A collection is its own separate entity  
25 collection. Ocwen was what's referred to in my world as a

John Ulzheimer - Direct (Manning)

210

1 tradeline or an account.

2 Q. Okay. And that account was, was not in collections?

3 A. Which one are we talking about? The duplicate or the  
4 one that's not a duplicate?

5 Q. Either one.

6 A. Okay. So the one that's a duplicate was not in  
7 collections but it showed as, if I, if I remember correctly,  
8 foreclosure and as, I think, 120 days late if I remember.

9 And then you have the other one which did not show as  
10 being in foreclosure, but may have had some minor derogatory  
11 entries associated with it.

12 Q. With the 11 other collection accounts, is there any,  
13 any meaning or significance attached to the fact that there  
14 was also this duplicative in terms of scoring and  
15 creditworthiness?

16 A. No. Just because of the, just because of the sheer  
17 inventory or the aggregate of all the bad stuff -- I mean,  
18 this is, this is the simplest way I can put it.

19 You, you can't ignore derogatory entries 1 through 13  
20 and then blame everything on derogatory entry 14. That's  
21 not how credit scoring systems work. That's not how lenders  
22 evaluate credit reports.

23 Q. Okay. That makes sense to me. So there's a difference  
24 between -- I may have this wrong. There's a difference  
25 between collections and tax liens?

John Ulzheimer - Direct (Manning)

211

1 A. That's correct.

2 Q. Okay, good.

3 A. A tax lien is a public record. A collection is not a  
4 public record.

5 Q. Now, the public record category, there were two  
6 derogatory items in that category in addition to the 11  
7 other collection accounts.

8 A. That's correct. And just for clarity -- I know there  
9 are a lot of different types of public records; right? If  
10 you're married, the amount of taxes you pay on your house,  
11 all that stuff is public information.

12 As far as credit reporting goes, there are only three.  
13 They're all bad; bankruptcy, tax lien, judgment. So if  
14 you've got a public record on your credit report, it can't  
15 be anything other than derogatory.

16 Q. How long does that stay on the credit report?

17 A. So it depends on the type. Bankruptcies can remain no  
18 longer than ten years. Judgments can remain no longer than  
19 seven years from the date the judgment was filed.

20 Tax liens are a different animal. Tax liens can remain  
21 on credit reports indefinitely, or no longer than seven  
22 years from the date they're released or they have to be  
23 removed immediately if they've been withdrawn. So it's  
24 going to depend on kind of the current status of the lien.

25 Q. Okay. So I think I understand the categories

John Ulzheimer - Direct (Manning)

212

1 generally. Which one of those categories applied to  
2 Mr. Daugherty?

3 A. So his liens were released, so they would still remain  
4 on his credit report for seven years from the date of the  
5 release.

6 Q. Okay. So can you tell from the credit report when they  
7 were released?

8 A. The date of release is not -- excuse me. The date of  
9 release is not on this particular credit report, this  
10 whatever exhibit, --

11 Q. Creditscore.com.

12 A. Creditscore.com, yes. The date filed is on the report.

13 Q. Okay. Tell me the date filed.

14 A. So the Wood County --

15 Q. Yes.

16 A. -- tax lien was filed February 27th of 2011. So let's  
17 just say hypothetically that Mr. Daugherty paid it the same  
18 day it was filed, which is unusual because then you would  
19 have paid it beforehand and you wouldn't have had a lien.  
20 But let's just say hypothetically that that's what occurred.

21 Then the credit reporting agencies would be allowed to  
22 maintain that now released lien until February 27th of 2018.  
23 And that's the best case scenario.

24 Q. Okay. So even if the moment it was filed he paid it  
25 that same day, it's staying on his report for seven years,

1 which is well beyond today.

2 A. February, 2018, that's right.

3 The second one, which looks like it's a lien from the  
4 State of West Virginia, the filing date of that one is  
5 January 23rd, 2009.

6 And, again, in the absolute best case scenario, he was  
7 standing there when they filed it and immediately paid it.  
8 Then you would add seven years to that date which already  
9 would have passed. It would have been 1-23 of 2016.

10 Q. Okay. Gotcha. And it doesn't say when that was  
11 released?

12 A. This particular type of credit report doesn't have that  
13 field, no.

14 Q. Got it.

15 THE COURT: Find a convenient stopping place,  
16 counsel.

17 MR. MANNING: Judge, I can stop right now.

18 THE COURT: All right. I didn't intend to rush  
19 you.

20 Ladies and gentlemen of the jury, I'm going to give you  
21 a recess for the evening. While you're out, do not discuss  
22 this case among yourselves. Do not permit anyone to discuss  
23 it with you or in your presence.

24 Remember that you're under a continuing obligation not  
25 to listen to, view, or read any media coverage that there

1 might be. And I'm going to release you. Have a good,  
2 restful evening and please be in your jury lounge tomorrow  
3 morning at 10:00 a.m. I'll see you then.

4 (Jury retired from the courtroom at 4:54 p.m.)

5 THE COURT: Mr. Manning, I'll hear your Rule 50  
6 motion at 9:00. I'll see you all then. Have a good  
7 evening, counsel.

8 (Trial recessed at 4:55 p.m.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 I, Lisa A. Cook, Official Reporter of the United  
2 States District Court for the Southern District of West  
3 Virginia, do hereby certify that the foregoing is a true and  
4 correct transcript, to the best of my ability, from the  
5 record of proceedings in the above-entitled matter.

6

7

8 s\Lisa A. Cook June 12, 2016

9 Reporter

Date

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25